

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF WASHINGTON  
3 IN TACOMA

4 MARIA VARNEY, Individually )  
5 and as Personal )  
6 Representative for the ) No. CV18-5105RJB  
7 Estate of DONALD VARNEY, )  
8 Plaintiffs, )  
9 v. )  
10 AIR & LIQUID SYSTEMS )  
11 CORPORATION, et al., )  
12 Defendants. )

13 EVIDENTIARY HEARING

14 April 15, 2019

15 BEFORE THE HONORABLE ROBERT J. BRYAN  
16 UNITED STATES DISTRICT COURT JUDGE

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Barry L. Fanning, RMR, CRR - Official Court Reporter

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Liquid Systems:****Kevin Craig  
GORDON REES SCULLY MANSUKHANI****For the Defendant  
Armstrong  
International:****Stephanie Ballard  
PREG O'DONNELL & GILLETT****For the Defendant  
Flowserve US:****Marc Carlton  
LEWIS BRISBOIS BISGAARD & SMITH****For Defendants Foster  
Wheeler & CBS:****Alice Serko  
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Industries:****Michael Ricketts  
GORDON THOMAS HONEYWELL****For Defendants  
Ingersoll-Rand & Velan  
Valve:****Kevin Craig  
GORDON REES SCULLY MANSUKHANI****For the Defendant John  
Crane:****Claire Weglarz  
Daira Waldenberg  
HAWKINS PARNELL & YOUNG****For the Defendant  
Parker-Hannifin:****Nicole MacKenzie  
WILLIAMS KASTNER & GIBBS****For the Defendant  
Warren Pumps:****Allen Eraut  
RIZZO MATTINGLY BOSWORTH****For the Defendant  
Crosby Valves:****Ronald C Gardner  
GARDNER TRABOLSI & ASSOCIATES**

1       **For the Defendant SB**  
2       **Decking: (Telephonic)**

**John Michael Mattingly**  
          **RIZZO MATTINGLY BOSWORTH**

3       **For the Defendant Weir**  
4       **Valves & Control:**  
5       **(Telephonic)**

**Dana C Kopij**  
          **WILLIAMS KASTNER & GIBBS**

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25       **Proceedings stenographically reported and transcript**  
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09:35:43AM 1 THE COURT: Well, we have quite a gang of lawyers  
09:35:46AM 2 this morning. I had an environmental case involving the  
09:35:50AM 3 Tacoma Tar Pits, and there were this many lawyers in the  
09:35:55AM 4 courtroom. I made the remark that if they each got a  
09:36:00AM 5 shovel and went down there and cleaned it up, we could  
09:36:04AM 6 forget the lawsuit.

09:36:05AM 7 Anyway, this is in Cause No. 18-5105, Varney against  
09:36:18AM 8 a number of defendants. It comes on today for a special  
09:36:25AM 9 hearing regarding the admissibility of what's in the file  
09:36:32AM 10 as Docket No. 231-1, the affidavit of the decedent  
09:36:43AM 11 plaintiff, and also regarding the admissibility of an  
09:36:50AM 12 expert witness' testimony based on that affidavit.

09:36:57AM 13 I want to keep this hearing to the issues outlined in  
09:37:04AM 14 the order that set it up. My gosh, I had all the papers  
09:37:17AM 15 lined up here and now I've lost them. Did you steal some  
09:37:22AM 16 of my stuff? Let me call the roll and get your  
09:37:44AM 17 appearances. For plaintiffs, Mr. Horn.

09:37:51AM 18 MR. ADAMS: Good morning, your Honor.

09:37:52AM 19 THE COURT: Mr. Adams.

09:37:55AM 20 MR. ADAMS: Good morning, your Honor.

09:37:57AM 21 MR. HORN: Good morning.

09:38:01AM 22 MR. ADAMS: Dawn Brown is also here. She is Don  
09:38:04AM 23 Varney's daughter.

09:38:05AM 24 THE COURT: Fine. For Air & Liquid Systems,  
09:38:11AM 25 Mr. Craig.

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09:39:01AM 18  
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09:39:21AM 25

MR. CRAIG: Good morning, your Honor.

THE COURT: For Armstrong International,  
Ms. Ballard.

MS. BALLARD: Good morning, your Honor.

THE COURT: For Flowserve U.S., Mr. Carlton.

MR. CARLTON: Good morning, your Honor.

THE COURT: For Foster Wheeler Energy,  
Ms. Johnson, I guess, right?

MS. JOHNSON: Good morning.

THE COURT: Mr. Vega.

MR. VEGA: Good morning.

THE COURT: And also Ms. Serko.

MS. SERKO: Good morning, your Honor.

THE COURT: For General Electric, Mr. Nadolink.

MS. JOHNSON: The plaintiffs and General Electric  
have -- It is my understanding that plaintiffs and --

THE COURT: Let me warn you all, I have a not  
good hearing problem, so you need to speak right into the  
mic. If it is easier to remain seated, that's fine. But  
you need to talk right into the mic for me to pick it up.

MS. JOHNSON: It is my understanding that  
plaintiffs and General Electric have reached a resolution.

THE COURT: I'm sorry. See, I missed that.

MS. JOHNSON: My understanding is plaintiffs and  
General Electric have reached a resolution in this matter.

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09:39:24AM 1 MR. ADAMS: That's correct, your Honor.

09:39:28AM 2 THE COURT: For IMO Industries, Mr. Ricketts.

09:39:33AM 3 MR. RICKETTS: Good morning, your Honor.

09:39:35AM 4 THE COURT: And for Ingersoll-Rand, Mr. Craig.

09:39:39AM 5 MR. CRAIG: Yes.

09:39:40AM 6 THE COURT: And for John Crane, Inc.,

09:39:46AM 7 Ms. Weglarz.

09:39:47AM 8 MS. WEGLARZ: Yes, your Honor.

09:39:48AM 9 THE COURT: And Ms. Waldenberg.

09:39:52AM 10 MS. WALDENBERG: Yes, your Honor.

09:39:54AM 11 THE COURT: For McNally Industries, Mr. Wheeler.

09:39:59AM 12 I don't think he is here. For Parker-Hannifin,

09:40:03AM 13 Ms. MacKenzie.

09:40:06AM 14 MS. MacKENZIE: Yes, your Honor.

09:40:07AM 15 THE COURT: For Sterling Fluid Systems, anyone

09:40:11AM 16 present? I don't think they are present.

09:40:16AM 17 Velan Valve, Mr. Craig.

09:40:19AM 18 MR. CRAIG: Yes, again, your Honor.

09:40:22AM 19 THE COURT: Warren Pumps, Mr. Eraut.

09:40:25AM 20 MR. ERAUT: Eraut. Good morning, your Honor.

09:40:27AM 21 THE COURT: And do we have people on the phone,

09:40:35AM 22 the ones listed here?

09:40:36AM 23 THE CLERK: I believe so.

09:40:37AM 24 THE COURT: For Crosby Valve, Mr. Gardner. Are

09:40:43AM 25 you on the phone? Mr. Gardner. I don't know where he is.

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09:40:56AM 1 THE CLERK: I think we might be having some  
09:40:58AM 2 problems with the courtroom technology system. It froze  
09:41:02AM 3 up on me.

09:41:02AM 4 THE COURT: And SB Decking, Mr. Mattingly. He is  
09:41:08AM 5 supposed to be on the phone, too.

09:41:12AM 6 MS. KOPIJ: Good morning, your Honor. Dana Kopij  
09:41:15AM 7 for Weir Valves.

09:41:16AM 8 THE COURT: I'm sorry?

09:41:23AM 9 MS. KOPIJ: Dana Kopij for Weir Valves &  
09:41:26AM 10 Controls. I think it is on the second page, at the top.

09:41:30AM 11 THE COURT: Yes. Thank you. Anybody I missed?

09:41:43AM 12 MR. MATTINGLY: Good morning, your Honor. I am  
09:41:44AM 13 not sure if you can hear me okay.

09:41:46AM 14 THE COURT: Yeah. Who are you?

09:41:50AM 15 MR. MATTINGLY: My name is Michael Mattingly. I  
09:41:54AM 16 am appearing on behalf of SB Decking.

09:41:57AM 17 THE COURT: Anyone else on the phone? All right.

09:42:02AM 18 I have read everything on this subject that is in the  
09:42:06AM 19 file. I must say that I read a lot of things over and  
09:42:14AM 20 over and over that were repeated in the briefing. I hope  
09:42:20AM 21 we won't have that trouble with argument here.

09:42:30AM 22 I indicated that I wanted the plaintiffs to go first,  
09:42:37AM 23 I guess out of efficiency rather than concern about burden  
09:42:44AM 24 of proof and so forth. Let's proceed first with any  
09:42:51AM 25 opening statement you wish to make.

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09:42:53AM 1 MR. ADAMS: Thank you, your Honor.

09:42:57AM 2 MR. VEGA: Your Honor, this is Dennis Vega for  
09:42:59AM 3 Foster Wheeler. If I may, before we proceed? There is an  
09:43:02AM 4 issue that I think we need to deal with before we begin  
09:43:07AM 5 the hearing. And that is, we issued a subpoena on  
09:43:13AM 6 plaintiffs' counsel for the metadata related to the  
09:43:16AM 7 statement which is very important to this case. I think  
09:43:20AM 8 before we proceed with the hearing we should get a ruling  
09:43:22AM 9 at least on whether in fact plaintiffs' claimed work  
09:43:29AM 10 product privilege actually exists.

09:43:32AM 11 It is our position that because they produced this  
09:43:34AM 12 exhibit to the defendants they have waived any and all  
09:43:38AM 13 privileges related to that declaration pursuant to Federal  
09:43:43AM 14 Rule of Evidence 502, and we are entitled to the metadata  
09:43:48AM 15 associated with that under Federal Rule 106, because we  
09:43:51AM 16 want the entire complete picture, not just the portion  
09:43:55AM 17 that plaintiff decided to give us in the declaration.

09:43:59AM 18 THE COURT: I don't know what plaintiffs'  
09:44:01AM 19 position is about privilege and work product and so forth.  
09:44:07AM 20 I sort of assumed we would deal with that as we went along  
09:44:10AM 21 here. Do you have some response now, counsel?

09:44:16AM 22 MR. ADAMS: Sure, your Honor. We are prepared to  
09:44:18AM 23 proceed with the evidentiary hearing. There was a  
09:44:22AM 24 subpoena served on my law firm which gave, I think, less  
09:44:28AM 25 than three days' notice for the production of privileged

09:44:32AM 1 materials.

09:44:34AM 2 We objected to the subpoena based on untimeliness,  
09:44:40AM 3 the location for the subpoena was too far away, and based  
09:44:45AM 4 on privilege and work product. When I say "we," my law  
09:44:54AM 5 firm, which, based on my understanding of the law, puts  
09:44:56AM 6 the burden on the moving party to file a motion to compel  
09:45:00AM 7 or to seek some other type of relief and bring it to the  
09:45:02AM 8 Court's attention, which they have not done.

09:45:05AM 9 Certainly we maintain that preparing a declaration,  
09:45:11AM 10 which lawyers do regularly in litigation, does not waive  
09:45:14AM 11 any attorney-client privilege.

09:45:18AM 12 MS. JOHNSON: Your Honor, if I may address that  
09:45:20AM 13 briefly? We actually did file, so -- It is Docket No. --

09:45:24AM 14 THE COURT: Just a second. Consider the court  
09:45:39AM 15 reporter. He has to get your names down. So before you  
09:45:41AM 16 start talking, reintroduce yourself for the benefit of the  
09:45:47AM 17 court reporter.

09:45:47AM 18 MS. JOHNSON: Thank you, your Honor. Malika  
09:45:49AM 19 Johnson on behalf of Foster Wheeler. Your Honor, we  
09:45:52AM 20 actually did file with the court the subpoena that was  
09:45:54AM 21 issued in this case, that's Docket No. 348. The subpoena  
09:46:00AM 22 was issued pursuant to Federal Rule 45. It called for  
09:46:08AM 23 certain electronically stored data to be produced in  
09:46:12AM 24 Seattle. The time for production was April 11th, at noon.

09:46:22AM 25 The plaintiff had -- under the federal rules the

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09:46:25AM 1 plaintiffs had until noon on Thursday to file their  
09:46:28AM 2 objections, or else those objections were waived. They  
09:46:32AM 3 did not file -- I say "file," but I mean serve. They did  
09:46:36AM 4 not serve those objections prior to noon on Thursday.  
09:46:41AM 5 They served the objections at 7:10 p.m. on Thursday.

09:46:48AM 6 The objections that were served were, furthermore,  
09:46:51AM 7 deficient under the rule, because while they claimed work  
09:46:55AM 8 product privilege, they failed to produce a privilege log  
09:47:02AM 9 identifying the documents and other materials that they  
09:47:05AM 10 had and why they were privileged.

09:47:10AM 11 So plaintiff has not complied with Federal Rule 45,  
09:47:15AM 12 and at this time Foster Wheeler is seeking an order  
09:47:19AM 13 directing compliance with the valid, properly issued  
09:47:24AM 14 subpoena.

09:47:27AM 15 MR. ADAMS: I don't know if you want a response,  
09:47:30AM 16 your Honor? This is Ben Adams for the plaintiff.

09:47:34AM 17 THE COURT: No. I am not going to deal with that  
09:47:37AM 18 this morning. We will see in the course of this  
09:47:41AM 19 evidentiary hearing if privileges are claimed, and we will  
09:47:51AM 20 go from there. If privilege is not claimed, that is one  
09:47:58AM 21 thing. If it is claimed, then we will deal with it at  
09:48:04AM 22 that time or bypass it.

09:48:07AM 23 That appears to me to be a side issue to what we are  
09:48:11AM 24 talking about here. Not that it might not be important at  
09:48:19AM 25 some point, but at this point I think we should proceed

09:48:21AM 1 with our hearing.

09:48:26AM 2 Okay. Opening statement. Bear in mind that I have  
09:48:31AM 3 read, and read, and read, and read the stuff in the file.  
09:48:36AM 4 Be gentle with me.

09:48:40AM 5 MR. ADAMS: I will be brief, your Honor. Good  
09:49:03AM 6 morning, your Honor. Again, this is Ben Adams.

09:49:09AM 7 THE COURT: Just a second. Okay. I've got it.

09:49:13AM 8 MR. ADAMS: This is Gloria and Don Varney.  
09:49:16AM 9 Gloria's name is Maria. She goes by Gloria. This is  
09:49:20AM 10 Gloria and Don Varney. They were married for 28 years.

09:49:27AM 11 Don died of mesothelioma on February 8th, 2018. When  
09:49:34AM 12 he was young, he worked in the shipyards, and he was  
09:49:37AM 13 exposed to asbestos for twelve years in the shipyards.

09:49:41AM 14 When he got sick with mesothelioma, he told his wife,  
09:49:46AM 15 "I was exposed to asbestos in the shipyards." He told his  
09:49:51AM 16 daughter, "I was exposed to asbestos in the shipyards."  
09:49:55AM 17 He told his doctors, "I was exposed to asbestos in the  
09:49:58AM 18 shipyards." He told all of them.

09:50:01AM 19 And then the day before he died, he signed a document  
09:50:05AM 20 saying he was exposed to asbestos in the shipyards,  
09:50:09AM 21 entirely consistent with everything he had told everyone  
09:50:12AM 22 in his life when he got the disease.

09:50:16AM 23 Like I said, they were married for 28 years.  
09:50:25AM 24 Mr. Varney did a lot of nice things for Gloria. When they  
09:50:29AM 25 were married -- They got married twice, once here in the

09:50:33AM 1 United States, and then Don Varney had another wedding for  
09:50:38AM 2 Gloria in Mexico. He would cook for her, he would clean  
09:50:42AM 3 for her, he would do the laundry, he would pay the bills,  
09:50:48AM 4 he would do things that husbands do, like fill up her gas  
09:50:54AM 5 when she didn't ask.

09:50:55AM 6 He told her, "Gloria, I'm your husband, and I'm going  
09:50:59AM 7 to take care of you. You're never going to have to worry  
09:51:04AM 8 about anything in your life."

09:51:06AM 9 And when Don got sick he got a death sentence. He  
09:51:13AM 10 got mesothelioma, a cancer with only one cause, that is  
09:51:18AM 11 one of the most aggressive, virulent, and deadly cancers  
09:51:22AM 12 that exist.

09:51:25AM 13 There are a number of different types of  
09:51:29AM 14 mesothelioma. The mesothelioma that Mr. Varney got was  
09:51:33AM 15 the most aggressive, most deadly,  
09:51:40AM 16 quickest-at-ending-your-life version of all of the  
09:51:43AM 17 mesotheliomas. It was the sarcomatoid type of  
09:51:50AM 18 mesothelioma. And so Don got sick very quickly.

09:52:00AM 19 But he held on to life because he promised Gloria he  
09:52:06AM 20 would take care of her. And so he held on, and he held  
09:52:10AM 21 on, and he held on, because he wanted to get his  
09:52:15AM 22 deposition done. But he got so sick that he couldn't  
09:52:21AM 23 complete his deposition, but he still held on to life.  
09:52:27AM 24 And he held on and he signed this declaration. Every  
09:52:33AM 25 witness in the room says the same thing, he stood up in

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09:52:38AM 1 bed, he held the declaration, he looked at it, he read it,  
09:52:42AM 2 he seemed to understand it, he said he understood it, and  
09:52:45AM 3 he signed it with his own hand. And then he laid back in  
09:52:50AM 4 bed, closed his eyes, he never moved again, he never  
09:52:55AM 5 opened his eyes again, he never spoke again, he never left  
09:52:58AM 6 the bed again, and he died the next day.

09:53:02AM 7 We believe that the evidence at this hearing will  
09:53:07AM 8 show two things: One, Mr. Varney signed a document that  
09:53:16AM 9 is his dying declaration, that satisfies all of the  
09:53:19AM 10 elements of Evidence Rule 804(b)(2). And it was a dying  
09:53:26AM 11 declaration when he signed it. And he was competent to  
09:53:31AM 12 sign it on February 7th, 2018, when he did so.

09:53:36AM 13 Most of the elements, the evidence will show, to  
09:53:46AM 14 satisfy a dying declaration are undisputed. Number one,  
09:53:50AM 15 Don Varney is unavailable. He is gone.

09:53:54AM 16 Number two, this is a civil action. Undisputed.

09:53:57AM 17 Number three, he made a statement. Largely  
09:54:01AM 18 undisputed. The statutes say -- When he signed the  
09:54:07AM 19 document -- He can make an oral or a written statement.  
09:54:11AM 20 His signing of a document was a written statement.  
09:54:14AM 21 Undisputed.

09:54:16AM 22 Number four, he did so while believing his death was  
09:54:20AM 23 imminent. There will be evidence about that. Number one,  
09:54:23AM 24 he had a terminal cancer, and he knew it. Number two, he  
09:54:27AM 25 signed the declaration, and it said right in the

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09:54:30AM 1 declaration, "I have no hope or expectation of recovery  
09:54:35AM 2 from this terminal disease. I know my death is imminent."

09:54:41AM 3 His treating physician, Dr. Kercheval, signed a  
09:54:45AM 4 declaration the same day saying Mr. Varney has lost  
09:54:49AM 5 55 pounds; his pain has increased; he has stopped eating;  
09:54:54AM 6 he has stopped drinking; his life expectancy is measured  
09:54:59AM 7 in days, not weeks; his death is imminent.

09:55:05AM 8 His family members were there. His wife testified,  
09:55:10AM 9 and you will hear that, that she knew the end was near.  
09:55:14AM 10 His daughter will testify, "He told me he is never going  
09:55:18AM 11 to leave the hospital."

09:55:23AM 12 A priest came, because Mr. Varney was Catholic, and  
09:55:28AM 13 gave him the last rites, and final sacred anointments that  
09:55:38AM 14 in Catholicism are given immediately before death. And he  
09:55:42AM 15 died the next day. Most importantly, he died the very  
09:55:46AM 16 next day.

09:55:47AM 17 And so we believe the evidence will show  
09:55:52AM 18 overwhelmingly that he knew his death was imminent.

09:55:57AM 19 The last element of a dying declaration is that the  
09:56:01AM 20 statements in the declaration must be about the cause or  
09:56:05AM 21 circumstances of death. And Mr. Varney had asbestos  
09:56:10AM 22 cancer, called mesothelioma, with one cause, asbestos.  
09:56:16AM 23 What was in his declaration were the ways he was exposed  
09:56:19AM 24 to asbestos which caused his death.

09:56:24AM 25 And so we believe the evidence will show we have

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09:56:31AM 1 satisfied the dying declaration exception to the hearsay  
09:56:35AM 2 rule.

09:56:37AM 3 The number two issue, that your Honor is well aware  
09:56:42AM 4 of, in the order was, was Mr. Varney competent? Was he  
09:56:48AM 5 competent, which is required under the summary judgment  
09:56:52AM 6 statute, for an affidavit to be presented to oppose a  
09:56:57AM 7 summary judgment motion, which is one of the issues before  
09:56:59AM 8 the Court?

09:57:00AM 9 We have endeavored over the last three weeks to  
09:57:05AM 10 depose and speak with all of the people who might have any  
09:57:09AM 11 information about whether or not Mr. Varney was competent.

09:57:14AM 12 One thing we know for sure is he signed the  
09:57:17AM 13 declaration. He was competent enough to hold a pen and  
09:57:23AM 14 sign the declaration in the correct place.

09:57:29AM 15 The medical records show that he was more than just  
09:57:36AM 16 able to sign. The Court will hear that on February 7th,  
09:57:46AM 17 2018 -- There are a voluminous number of medical records  
09:57:49AM 18 from the nursing staff checking on Mr. Varney every few  
09:57:53AM 19 hours, and from his treating physician meeting with him.  
09:57:57AM 20 And it is all in a timeline -- a chronological timeline.

09:58:01AM 21 The nursing notes say Mr. Varney was alert, he was  
09:58:05AM 22 oriented times four, he knew his name, he knew what day it  
09:58:10AM 23 was, he knew what time it was, he knew who the president  
09:58:14AM 24 was. He was communicating with the nurses on the same day  
09:58:18AM 25 when he signed the declaration. His mood was appropriate.

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09:58:24AM 1 He was not showing strange behavior. His thought process  
09:58:28AM 2 in the records, coherent. He was answering questions  
09:58:33AM 3 appropriately. He was calm and cooperative. His  
09:58:37AM 4 attention span was appropriately attentive.

09:58:43AM 5 These are all statements in the medical records  
09:58:48AM 6 before any lawyers, before any lawsuits,  
09:58:53AM 7 subjective/objective statements in the medical records  
09:58:55AM 8 from his treating physicians and nurses.

09:58:57AM 9 He was also communicating with his doctors. When his  
09:59:00AM 10 doctors came to visit they noted his mental status was  
09:59:04AM 11 oriented to his own ability, and he denied problems with  
09:59:08AM 12 gastrointestinal issues. He denied problems with urinary  
09:59:14AM 13 issues. He denied problems with his head and his neck.  
09:59:18AM 14 The evidence from the medical professionals will be that  
09:59:21AM 15 there has to be some communication from the patient to the  
09:59:25AM 16 medical professional to write those things down.

09:59:29AM 17 He told his doctors when he was examined that he  
09:59:32AM 18 feels the same, and they noted neurologically he followed  
09:59:38AM 19 simple commands. That's all true on February 7th, 2018,  
09:59:42AM 20 when he signed this declaration.

09:59:46AM 21 We were able to depose one of his treating  
09:59:52AM 22 physicians, and we have a video of that -- portions of  
09:59:54AM 23 that deposition that we will play for the Court. The  
09:59:57AM 24 physician said over and over and over and explained the  
10:00:00AM 25 medical records. But this is just one of the things that

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10:00:03AM 1 his treating physician, Dr. Sharma, treating  
10:00:07AM 2 pulmonologist, said: Based on the records that Dr. Sharma  
10:00:20AM 3 had reviewed, Mr. Varney was alert and oriented. The  
10:00:28AM 4 question to Dr. Sharma was, "Was Mr. Varney alert enough  
10:00:32AM 5 to sign this document that he signed?" And the answer  
10:00:35AM 6 Dr. Sharma gave was, "Based on the records" which I will  
10:00:40AM 7 present, "I think he was alert and oriented when he signed  
10:00:43AM 8 this document." That's his own treating physician.

10:00:47AM 9 As the Court knows, there was a notary present who  
10:00:50AM 10 notarized the document that Mr. Varney signed at the time  
10:00:53AM 11 he signed it, Stephan J. Parris. We were able to depose  
10:00:58AM 12 him last Friday. He said unequivocally, "I would never  
10:01:04AM 13 notarize a document if the person was not lucid, ever. I  
10:01:09AM 14 have notarized hundreds and hundreds of documents." "If a  
10:01:12AM 15 person is unable to respond, would you notarize a  
10:01:16AM 16 document?" "Absolutely not." That was his sworn  
10:01:20AM 17 testimony. He said, "Because I don't notarize people who  
10:01:24AM 18 aren't lucid and don't understand what they are doing. I  
10:01:30AM 19 do not, will not ever notarize anyone who is not lucid."  
10:01:35AM 20 That was the testimony of the notary that was there when  
10:01:38AM 21 Mr. Varney signed the document.

10:01:44AM 22 His family members were deposed. Gloria Varney was  
10:01:48AM 23 deposed. She said, "He was lucid. He sat up in bed. He  
10:01:52AM 24 looked at the document. He read the document. He  
10:01:54AM 25 understood the document. He signed the document. I know

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10:01:57AM 1 him. He would never sign anything that wasn't true."

10:02:01AM 2 His daughter was in the room. She will give similar  
10:02:04AM 3 testimony today.

10:02:06AM 4 There was a priest in the room who witnessed the  
10:02:10AM 5 signing. He provided a sworn declaration. "Mr. Varney  
10:02:14AM 6 was handed the attached document and a pen. Although he  
10:02:18AM 7 was very sick, I was impressed that he sat up to sign the  
10:02:21AM 8 document rather than stay lying in the bed and make a  
10:02:25AM 9 scribble signature, lying down that I have seen other  
10:02:28AM 10 patients make when in hospital. He opened his eyes, held  
10:02:31AM 11 the document, responded positively that he knew what he  
10:02:35AM 12 was signing, and signed it. He appeared to understand the  
10:02:39AM 13 document." That's from a priest who was in the room and  
10:02:43AM 14 witnessed the signing.

10:02:45AM 15 They tell you in law school not to overstate your  
10:02:52AM 16 case in opening statement, but the evidence truly, your  
10:02:56AM 17 Honor, is overwhelming from everyone who was there, from  
10:03:00AM 18 the medical records, and people who had no interest in  
10:03:03AM 19 this case whatsoever that Mr. Varney was coherent when he  
10:03:08AM 20 signed the document.

10:03:11AM 21 Just quick mention of the defense, and then I will  
10:03:13AM 22 sit down. The defense, as I understand it, was that there  
10:03:19AM 23 is one record from Dr. Kercheval, one of Mr. Varney's  
10:03:26AM 24 treating physicians, that at 11:30 a.m. on the date the  
10:03:30AM 25 document was signed, Mr. Varney was somewhat or largely

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1 nonresponsive at that exact moment when the doctor met  
2 with Mr. Varney.

3 You will hear from Dr. Sharma, who is another  
4 treating physician, who absolutely respects Dr. Kercheval,  
5 that Mr. Varney could not have been nonresponsive at that  
6 time, because in the very same record there is an  
7 examination of Mr. Varney's response to stimuli in his  
8 eye, and to following light commands, and he is  
9 responsive, and he does follow commands. So there is some  
10 conflict in that medical record within itself.

11 But more importantly, Mr. Varney did not sign the  
12 declaration at 11:30 a.m. He signed it a half hour  
13 earlier, at 11:00 a.m. We know that because the notary  
14 documented it in his notary book right next to where Don  
15 signed in the book, and on the declaration. So we know  
16 precisely when Mr. Varney signed the document. It was  
17 11:00 a.m. What all of the witnesses have said is that he  
18 closed his eyes, laid back down in bed, and never spoke or  
19 responded again.

20 And so the evidence, we believe, will show that it is  
21 entirely consistent that Mr. Varney was responsive at  
22 11:00 a.m., and then when Dr. Kercheval came a half hour  
23 later, he was no longer responsive.

24 And so we believe that the evidence, taken as a  
25 whole, will show that Mr. Varney executed a dying

10:05:22AM 1 declaration, he was holding on to life to get it done, he  
10:05:26AM 2 died the very next day, and he was competent when he did  
10:05:30AM 3 so. Thank you so much.

10:05:31AM 4 THE COURT: Thank you.

10:05:33AM 5 MS. JOHNSON: Your Honor, can I note an objection  
10:05:35AM 6 for the record? Obviously there is no jury here and your  
10:05:38AM 7 Honor is quite capable of making evidentiary calls as  
10:05:41AM 8 things come up. But in this case we have exchanged  
10:05:45AM 9 deposition designations and objections to all of the  
10:05:49AM 10 proposed testimony that plaintiff has offered in this  
10:05:53AM 11 case. The defendants -- numerous defendants, not just  
10:05:58AM 12 Foster Wheeler, have objected to a number of the  
10:06:01AM 13 statements that were just included in plaintiffs' opening  
10:06:04AM 14 statement. Obviously your Honor has not been given a copy  
10:06:07AM 15 of any of the transcripts to make those rulings prior to  
10:06:10AM 16 those statements being used in opening statement.

10:06:13AM 17 Also, this declaration, that is still up on the  
10:06:16AM 18 screen, of Mr. Schimmel, is a hearsay document. He is not  
10:06:24AM 19 here present in this courtroom. He will not be called to  
10:06:26AM 20 testify at this hearing. So there is no basis for this  
10:06:30AM 21 statement to be admitted in this hearing at all.

10:06:39AM 22 MR. ERAUT: Excuse me, your Honor. This is Allen  
10:06:42AM 23 Eraft for defendant Warren Pumps. Incidentally, there are  
10:06:44AM 24 multiple defendants that have common interests here that  
10:06:48AM 25 may have the same objections. I assume you don't want us

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10:06:49AM 1 all to join in objections made by other defendants. Is  
10:06:52AM 2 the procedure acceptable to the Court that an objection  
10:06:56AM 3 made by one defendant will be deemed made by all  
10:06:59AM 4 defendants?

10:07:00AM 5 THE COURT: Yes. I think it is better that you  
10:07:02AM 6 opt out rather than having to opt in every time there is  
10:07:05AM 7 an objection --

10:07:08AM 8 MR. ERAUT: Thank you, your Honor.

10:07:10AM 9 THE COURT: -- as to opening statement.

10:07:35AM 10 MR. VEGA: Good morning, your Honor. Dennis Vega  
10:08:21AM 11 for Foster Wheeler.

10:08:24AM 12 At its core, this case is primarily -- The  
10:08:32AM 13 declaration is essentially hearsay. It is an out-of-court  
10:08:36AM 14 statement offered for the truth of the matter asserted,  
10:08:38AM 15 nothing more.

10:08:40AM 16 In fact, during plaintiffs' counsel's opening he  
10:08:44AM 17 actually said he told his wife, he told his daughter, he  
10:08:47AM 18 told his doctors. All of those statements are the same  
10:08:50AM 19 statement over and over and over again, and they were not  
10:08:53AM 20 said, as the rule requires, a declaration made under the  
10:09:04AM 21 belief of impending death. These statements were made  
10:09:08AM 22 numerous times, the same statement, over and over again.

10:09:12AM 23 In fact, plaintiffs' counsel said he was holding on,  
10:09:15AM 24 and holding on, and holding on. That holding on, we  
10:09:18AM 25 maintain, breaks that immediacy, the belief that you

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10:09:23AM 1 are -- that death is imminent.

10:09:26AM 2 When we are looking at this dying declaration and  
10:09:30AM 3 whether in fact it is a dying declaration there are two  
10:09:33AM 4 critical time periods that are important. There is the  
10:09:36AM 5 time period between when the incident occurred and when  
10:09:39AM 6 the statement is made. It is usually short, such as when  
10:09:44AM 7 it's, you know, "Bob has just shot me." And the  
10:09:47AM 8 rationale --

10:09:48AM 9 THE COURT: It wasn't Bob. It was somebody else.

10:09:54AM 10 MR. VEGA: The rationale being that it is  
10:09:57AM 11 spontaneous, it is made without reflection. In this  
10:10:00AM 12 particular instance, we don't have that here. We are  
10:10:04AM 13 recounting things that happened 50 years earlier.

10:10:07AM 14 Additionally, there is the time period between when  
10:10:11AM 15 the statement is made and death. Here, again, as  
10:10:15AM 16 plaintiff admitted in his opening, that statement was made  
10:10:20AM 17 over many weeks, over many months. It is the same  
10:10:24AM 18 statement over and over again. It is just blanket  
10:10:28AM 19 hearsay.

10:10:28AM 20 Additionally, the rule arises from the common law  
10:10:32AM 21 from homicide cases where, you know, there might not be  
10:10:35AM 22 any witnesses. That's not the case here. We are talking  
10:10:37AM 23 about shipyards that employed thousands of people. They  
10:10:44AM 24 actually identified several coworkers in this case. So  
10:10:48AM 25 there is no reason that we need to rely on really a

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10:10:53AM 1 plaintiff-fabricated declaration.

10:10:56AM 2 Under Federal Rule of Evidence 804(b)(2) it is  
10:11:02AM 3 plaintiffs' burden to prove several factors. As we will  
10:11:06AM 4 go through these factors, you will see that plaintiff  
10:11:08AM 5 fails to meet all three of these.

10:11:12AM 6 The statement -- This is not a statement that was  
10:11:16AM 7 made by Mr. Varney. In fact, as we go through this you  
10:11:20AM 8 are going to see that this was simply a legal document  
10:11:22AM 9 created by his attorney. It was not believing death was  
10:11:27AM 10 imminent. It was stated several weeks in advance. He was  
10:11:33AM 11 holding on. We deposed the wife. The wife said, "He  
10:11:37AM 12 wanted to do this for me." He knew he was -- he knew the  
10:11:40AM 13 purpose for this statement, and it was not done under  
10:11:43AM 14 impending death.

10:11:44AM 15 And it was not about its cause or circumstances. The  
10:11:49AM 16 instance relayed here is 50 years ago. I think it was 46  
10:11:54AM 17 to 60 years earlier.

10:11:57AM 18 The background of the case, very briefly, Mr. Varney  
10:12:00AM 19 worked in the shipyards from '57 to 1972. Forty-six years  
10:12:06AM 20 later, August 17th -- August 2017, he is diagnosed with  
10:12:10AM 21 mesothelioma. The case is filed December of 2017.

10:12:18AM 22 January 16th -- And this is going to be an important  
10:12:21AM 23 piece here. January 16th, plaintiff serves interrogatory  
10:12:25AM 24 responses on defendants.

10:12:29AM 25 January 22nd, they file a notice of deposition. The

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10:12:32AM 1 notice of deposition is for February 5th. Throughout that  
10:12:36AM 2 point in time there is no immediate threat of impending  
10:12:40AM 3 death. He knows -- He's alive, he is going to testify.

10:12:44AM 4 On February 1st they reschedule the video to  
10:12:50AM 5 February 8th. The reason given is that he is  
10:12:55AM 6 hospitalized, but he is stabilized. So we know  
10:12:58AM 7 February 1st he is at least stable, and they still think  
10:13:02AM 8 they are going to produce him for a deposition.

10:13:04AM 9 On February 2nd, and, again, this becomes very  
10:13:07AM 10 important -- this is communication from plaintiffs'  
10:13:10AM 11 counsel to the defendants -- Mr. Varney is currently on  
10:13:14AM 12 morphine, he is unable to speak, so we need to get the  
10:13:19AM 13 video done a little sooner. So they still expect to do  
10:13:22AM 14 the video.

10:13:23AM 15 February 7th is when they sign the declaration, and  
10:13:26AM 16 then he does pass away the next day.

10:13:28AM 17 Here, we deposed Mrs. Varney. We asked her,  
10:13:38AM 18 question, "On the morning that your husband signed the  
10:13:41AM 19 declaration, were you in the hospital room all morning?"  
10:13:44AM 20 "That day I returned early because that was going to  
10:13:47AM 21 happen, so I needed to be there. I needed to be there."  
10:13:52AM 22 "So you got -- you were at the hospital early, and then  
10:13:56AM 23 did you go to work that day?" "No, I wasn't working. I  
10:13:59AM 24 asked for permission from work. I wasn't working. I  
10:14:02AM 25 asked for permission."

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10:14:04AM 1 In reality, Ms. Varney later testifies she remained  
10:14:08AM 2 in the hospital that entire morning. And they were all  
10:14:11AM 3 waiting to sign this document. Again, waiting to sign the  
10:14:15AM 4 document. So it is not imminent. They are still waiting.  
10:14:19AM 5 They know that he is hanging on.

10:14:20AM 6 "You said when he started he wanted to do this. What  
10:14:26AM 7 do you mean by 'when he started?'" And Ms. Varney  
10:14:30AM 8 responds, "When they told him that he was ill from  
10:14:32AM 9 asbestos he started -- he wanted to do something because  
10:14:35AM 10 of his illness. So he knew that if he did that paperwork  
10:14:38AM 11 he would help me. So he wanted me to be okay."

10:14:41AM 12 Herein lies the real reason for the declaration. And  
10:14:47AM 13 we are going to go through it right now. You are going to  
10:14:50AM 14 see that this statement, which is the purported Varney  
10:14:53AM 15 declaration, is actually nothing more than just  
10:14:57AM 16 plaintiffs' statement -- plaintiffs' counsel. It is  
10:15:01AM 17 completely self-serving. As we go through it, you are  
10:15:03AM 18 going to see that appears to be copied from plaintiffs'  
10:15:06AM 19 interrogatory responses.

10:15:09AM 20 So here is the interrogatory responses that were  
10:15:12AM 21 served on the defendants earlier in this case, three weeks  
10:15:16AM 22 before the signed declaration. And it is virtually a cut  
10:15:22AM 23 and paste job.

10:15:23AM 24 So we have the declaration of Mr. Varney. In the  
10:15:26AM 25 declaration of Mr. Varney he says that he worked as a

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10:15:29AM 1 machinist at Puget Sound, and he gives the date. When we  
10:15:34AM 2 look at the interrogatory responses, same information.

10:15:38AM 3 Here, the declaration of Mr. Varney, he says -- he  
10:15:42AM 4 says in his declaration that he signs the day before he  
10:15:45AM 5 passes that he has knowledge of the facts and  
10:15:48AM 6 circumstances set forth below. But the problem is, three  
10:15:51AM 7 weeks earlier, when plaintiffs served their  
10:15:56AM 8 interrogatories, which are verified by plaintiff and  
10:15:59AM 9 plaintiff's wife, there, he says, "I believe my attorneys  
10:16:02AM 10 have information suggesting that I was exposed to  
10:16:05AM 11 defendants' asbestos products during my time working as a  
10:16:09AM 12 marine machinist." So three weeks earlier we are getting  
10:16:13AM 13 a more accurate version of what happened. It is his  
10:16:17AM 14 attorneys that are giving him this information.

10:16:18AM 15 Next, he says, "During my time at both the shipyards  
10:16:23AM 16 I breathed dust from the removal and replacement of  
10:16:25AM 17 asbestos-containing gaskets." In his interrogatories he  
10:16:29AM 18 basically says the same thing three weeks earlier, "As a  
10:16:33AM 19 marine machinist Mr. Varney was exposed to  
10:16:37AM 20 asbestos-containing gaskets and insulation."

10:16:39AM 21 Next, in the declaration, so the day before he passes  
10:16:42AM 22 away, he identifies turbines manufactured by General  
10:16:46AM 23 Electric and Westinghouse, valves manufactured by -- He  
10:16:49AM 24 lists type of equipment and then manufacturer name.

10:16:52AM 25 So let's go to the interrogatories. What does it say

10:16:54AM 1 there? The interrogatories, "He was exposed to  
10:16:57AM 2 asbestos-containing materials associated with valves  
10:17:00AM 3 manufactured by Atwood & Morrill." And he goes through  
10:17:04AM 4 the same -- the exact same items, the same company  
10:17:07AM 5 manufacturers.

10:17:14AM 6 Here again, "I never saw a warning about asbestos or  
10:17:23AM 7 cancer on a single product from any of these companies."  
10:17:29AM 8 That's what's in his declaration. But three weeks earlier  
10:17:32AM 9 it was, based on information his attorneys gave him,  
10:17:35AM 10 "Mr. Varney was never warned about the hazards of  
10:17:38AM 11 asbestos. He never saw a warning on any of defendants'  
10:17:43AM 12 products about the hazards of asbestos."

10:17:46AM 13 We have this progress note. This is a progress note  
10:17:50AM 14 that, to plaintiffs' counsel's credit, he raised it to  
10:17:53AM 15 your attention, because it is a very important entry in  
10:17:56AM 16 the doctor's note. So here we have a note from  
10:18:00AM 17 Dr. Kercheval, which is on the day that the declaration is  
10:18:03AM 18 presumably signed. It's at 11:30. And the interesting  
10:18:07AM 19 thing here is that the doctor says that he is now unable  
10:18:13AM 20 to provide any information and is nearly obtunded.

10:18:20AM 21 That is an interesting word. In Taber's Encyclopedic  
10:18:28AM 22 Medical Dictionary obtunded means, "Having diminished  
10:18:32AM 23 arousal and awareness, often as the result of  
10:18:36AM 24 intoxication, metabolic illness, infection, or neurologic  
10:18:41AM 25 catastrophe."

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10:18:42AM 1 Dr. Kercheval is asked, "What do you mean by  
10:18:45AM 2 'obtunded'?" He gives us his definition.

10:18:48AM 3 So what was Mr. Varney's condition on the 7th? "He  
10:18:51AM 4 had actually -- at that point I make a note that he is --  
10:18:54AM 5 was essentially obtunded." In other words, he was not  
10:18:59AM 6 responding to any verbal stimuli. That's within a half  
10:19:03AM 7 hour of him signing the declaration.

10:19:05AM 8 We asked Mrs. Varney, "Do you recall what time of day  
10:19:11AM 9 it was on February 7th when you saw your husband sign this  
10:19:15AM 10 document?" She says, "It was in the morning. I don't  
10:19:17AM 11 remember the time, but it was before noon or at noon." We  
10:19:21AM 12 know from the notary, we took his deposition, he says that  
10:19:26AM 13 it was signed at 11:00.

10:19:27AM 14 Again, this is Dr. Kercheval. You were shown a  
10:19:35AM 15 picture of another doctor, Dr. Sharma. But it turns out  
10:19:40AM 16 that Dr. Kercheval saw this -- saw Mr. Varney every single  
10:19:47AM 17 day, from the day he was admitted in January until the day  
10:19:50AM 18 he passed. He told us he worked 14 days straight.  
10:19:54AM 19 Dr. Kercheval was the attending physician. He was the  
10:19:57AM 20 attending physician in charge.

10:19:59AM 21 Dr. Sharma, and to Dr. Sharma's credit, he actually  
10:20:04AM 22 tells us that some of the notes that are in the medical  
10:20:07AM 23 records -- there is a template. It is basically as you go  
10:20:11AM 24 through you are just pushing the template and it just  
10:20:14AM 25 repeats what was on there days before. When you go

10:20:17AM 1 through the medical records you will see that some of the  
10:20:19AM 2 records have that he is on certain medications that he is  
10:20:22AM 3 not on. We know that he is not on the medications, they  
10:20:25AM 4 are just entering -- just pushing the button, because we  
10:20:29AM 5 actually see the bill later on and we see what they  
10:20:32AM 6 charged for. There are certain entries, like alert and  
10:20:36AM 7 oriented times four -- We are going to get to it, but you  
10:20:38AM 8 will see that Mr. Varney was nonresponsive for at least  
10:20:42AM 9 four days before he signed that declaration.

10:20:45AM 10 Here, Dr. Kercheval is asked, "During the time  
10:20:49AM 11 Mr. Varney was at Abrazo West, would you have been -- were  
10:20:53AM 12 you considered his primary care doctor?" "For the  
10:20:56AM 13 hospital, yes."

10:20:56AM 14 And here is Dr. Sharma. "Okay. If I -- if -- it  
10:21:02AM 15 would be typical, in your experience, for the attending  
10:21:05AM 16 physician to spend more time with the patient than you as  
10:21:08AM 17 a specialist in pulmonology?" His answer, "We are limited  
10:21:12AM 18 to our specialty only. We focus on our specialty and the  
10:21:16AM 19 attending physicians do develop the -- every part of it."

10:21:21AM 20 And here is another note from Dr. Sharma. This is  
10:21:24AM 21 the same day at 8:30 in the morning. "Neuro: Follows  
10:21:29AM 22 simple commands. Rapidly declining." At 8:30 a.m. he is  
10:21:34AM 23 rapidly declining.

10:21:35AM 24 Deposition of Dr. Sharma. "So all that says is he  
10:21:38AM 25 could move his eyes up and down, back and forth, correct?"

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10:21:43AM 1 "He can. He can follow the commands." "On command?" "On  
10:21:47AM 2 command." "Okay. In terms of his ability to otherwise  
10:21:49AM 3 respond, would you defer to Dr. Kercheval and his  
10:21:51AM 4 examination, his findings?" "Yes, sir."

10:21:54AM 5 Deposition of Dr. Sharma. "You don't have any  
10:21:58AM 6 personal knowledge whether Mr. Varney read and understood  
10:22:02AM 7 that declaration that counsel for plaintiffs has shown to  
10:22:07AM 8 you today; is that correct?" "That is correct. I have no  
10:22:10AM 9 knowledge."

10:22:11AM 10 This is email correspondence from Mr. Adams to the  
10:22:17AM 11 defendants. And it says, "Although Mr. Varney" -- and  
10:22:21AM 12 this was on February 2nd, "Although Mr. Varney may not be  
10:22:25AM 13 able to do it, he is in the hospital, on morphine, and  
10:22:30AM 14 unable to speak at this moment, we propose going forward."  
10:22:35AM 15 So February 2nd Mr. Varney is unable to speak at all. And  
10:22:38AM 16 that's from plaintiffs' counsel.

10:22:40AM 17 All of the material assertions in the declaration are  
10:22:47AM 18 taken from the interrogatory responses that were served  
10:22:49AM 19 three weeks earlier. When they were interrogatory  
10:22:53AM 20 responses they were based on counsel's knowledge, not  
10:22:56AM 21 Mr. Varney's.

10:22:58AM 22 Declaration of Mrs. Varney. This is the wife, again.  
10:23:05AM 23 Although you heard today in opening that he told his wife,  
10:23:10AM 24 he told his daughter, he told the doctors -- Here,  
10:23:16AM 25 Mrs. Varney is specifically asked, "Did you ever hear him

10:23:19AM 1 say the word 'insulation'?" "Insulation? No." "Did you  
10:23:23AM 2 ever hear insulation -- did you ever hear of insulation?  
10:23:26AM 3 Did you ever hear him say the word 'gasket'?" Answer:  
10:23:29AM 4 "Gasket?" "Gasket." "No, I don't remember." "Did you  
10:23:31AM 5 ever hear him say the word 'packing'?" "I don't remember.  
10:23:35AM 6 No, I don't remember."

10:23:36AM 7 Deposition of Dr. Sharma. "And so what Mr. Varney is  
10:23:41AM 8 telling you in this document that's on the first page --  
10:23:45AM 9 first of all, the document from February 6th -- so it's in  
10:23:50AM 10 2017, so it is over a year before Mr. Varney passed away?"  
10:23:54AM 11 "Yes, sir." "Okay. What Mr. Varney is essentially  
10:23:57AM 12 telling you in the document is that he was exposed to  
10:23:59AM 13 asbestos in the shipyards beginning in 1957, when he was  
10:24:03AM 14 18 years old?" "Yes, sir. Yes."

10:24:07AM 15 And this is talking about another note from  
10:24:09AM 16 Dr. Sharma, again, that he had recounted to his doctors  
10:24:13AM 17 months before the signing of this declaration. There is  
10:24:18AM 18 nothing immediate about this declaration.

10:24:20AM 19 Interrogatory responses can in no way be statements  
10:24:23AM 20 made under the belief of imminent death. And that's  
10:24:26AM 21 exactly what they are asking you to do here.

10:24:28AM 22 Mr. Varney could not speak for days before his death.  
10:24:31AM 23 Any statements purportedly made to counsel were weeks old,  
10:24:35AM 24 at best. They certainly were not on imminent belief of  
10:24:39AM 25 death.

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1           The re-signing of a lawyer-prepared pleading that  
2           restates allegations drawn from interrogatory responses  
3           does not make them reliable evidence. In fact, those  
4           are -- it's a classic hearsay statement, it is a classic  
5           self-serving statement. Those are never allowed to be  
6           admitted for any purpose, except if we were going to use  
7           them for impeachment. Defendants can use them  
8           affirmatively. Plaintiffs can't use them affirmatively.

9           The critical factual assertions IDing specific  
10          companies and materials, identifications of asbestos  
11          origins, those are not based on Mr. Varney's personal  
12          knowledge. Federal Rule -- This is based on Federal  
13          Rule 602, that is classic hearsay within hearsay.

14          The cause and the circumstance of death. Again,  
15          "Barry just shot me." Yes, that is talking about the  
16          cause of death. But if you tell somebody, "I am dying of  
17          mesothelioma," that is not relaying the cause or the  
18          circumstances. That is giving a diagnosis. That doesn't  
19          have any of the telltale assurances of reliability that we  
20          look to when a court is determining whether a dying  
21          declaration is going to be admitted.

22          Essentially plaintiffs' counsel typed out the factual  
23          allegations of the liability claims against all of the  
24          defendants, had Mr. Varney sign it on his deathbed, and  
25          then is asking this court to ratify those claims as

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1 factually reliable and true.

2 We talked about capacity. I am wrapping up here. We  
3 have an email, again, from Mr. Adams. And this is the day  
4 of the signing of the declaration. So here: "Dear  
5 counsel, unfortunately, Don is just too sick to go forward  
6 with his deposition tomorrow." So he is too sick to go  
7 forward with the deposition, but he is not too sick to  
8 sign a document. "He is in tremendous pain, can hardly  
9 breathe, and is barely hanging on to life. His death is  
10 imminent."

11 Let's take a look at that word "imminent," because,  
12 of course, it is derived from the statute itself. But,  
13 remarkably, all of the declarations that plaintiff uses to  
14 support -- You know, he always has -- You know, he's got  
15 the priest using the word "imminent." He's got the notary  
16 using the word "imminent." He has Dr. Kercheval using the  
17 word "imminent." Everybody is using the word "imminent."

18 Here, the declaration of Dr. Kercheval, talking  
19 about -- Again, this goes to Mr. Varney's competency at  
20 the time of the signing. "The treatment options for  
21 mesothelioma are palliative, not curative. The best  
22 result we can hope for is to prolong the patient's  
23 survival, while minimizing cancer-related symptoms.  
24 Mesothelioma is a progressive cancer in which patients  
25 often experience increasing levels of pain and greater

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difficulties with ambulation as the cancer progresses."

Additionally, "Patients' mental faculties often diminish due to the disease process or drugs that are administered."

At the end -- So here Dr. Kercheval is being asked questions. At the end of Page -- Paragraph 5, it states, "Additionally, patients' mental faculties often diminish due to the disease process or drugs that are administered, including drugs to manage pain." "Are you talking about patients generally there or are you talking about Mr. Varney?" Answer: "I don't know the exact reference at this point. Both would be true, in that in my notes, you know, I certainly made reference to his decrease in cognition." Again, that is the day he signs the declaration.

"Okay. It indicates that Mr. Varney began morphine on the 27th" -- and we are talking 27th of January here -- "and received it, it looks like, through the 8th, except for the 30th and 31st of January, and the 2nd and 3rd of February. Correct?" "That's what I see."

Here are some of the medications. He is on a litany of medications. I can't even pronounce the first one. Cetirizine, an antihistamine. Drowsiness and tiredness are the side effects.

Methocarbamol, a muscle relaxant. The known side

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10:29:18AM 1 effects -- and this is per the Physicians' Desk  
10:29:21AM 2 Reference -- confusion, drowsiness, dizziness, blurred  
10:29:25AM 3 vision. That was administered twice on the morning that  
10:29:27AM 4 Mr. Varney signed that declaration.

10:29:29AM 5 Morphine, an opioid. What are the side effects?  
10:29:33AM 6 Confusion, delirium, drowsiness, hallucinations, blurred  
10:29:38AM 7 vision. Again, he is on several medications. Blurred  
10:29:43AM 8 vision is a side effect. He is handed a document to sign.  
10:29:48AM 9 The morphine was administered three times that morning.

10:29:51AM 10 A note from Dr. Kercheval. And this is from -- this  
10:30:02AM 11 is two -- just two days before he signs the declaration.  
10:30:05AM 12 And already we are seeing signs. "Patient continues to  
10:30:10AM 13 decline since admission." And it says, "SIG decline,"  
10:30:14AM 14 which during the deposition he said is significant  
10:30:16AM 15 decline, "with very poor prognosis. Have had discussions  
10:30:21AM 16 with family, but patient is unable to significantly  
10:30:26AM 17 contribute to the discussion."

10:30:28AM 18 Again, Dr. Kercheval discussing his February 5th --  
10:30:36AM 19 two days before he signs the declaration -- medical  
10:30:38AM 20 examination. Again, he tells us, "He just wasn't  
10:30:43AM 21 cognitively able to contribute to that discussion?"  
10:30:49AM 22 "Yes."

10:30:50AM 23 Dr. Kercheval, again, when we are discussing the  
10:30:54AM 24 February 7th examination. "When you say that he's being  
10:31:00AM 25 nonresponsive, what in your mind does that mean in terms

10:31:03AM 1 of his condition?" "So at that point for this patient, my  
10:31:07AM 2 feeling would be that he had -- was deteriorating to the  
10:31:09AM 3 point where he wasn't able to respond any longer."

10:31:14AM 4 "When you say he is being nonresponsive, what does  
10:31:17AM 5 that mean? Does he recognize people who are in the room?"  
10:31:22AM 6 "Typically, I would say that -- if I'm saying he's  
10:31:25AM 7 nonresponsive, that would be me going in to evaluate him,  
10:31:30AM 8 and as part of doing the physical, calling his name,  
10:31:32AM 9 getting him to respond, whether that be opening his eyes  
10:31:35AM 10 or answer or grasp my hand, any one of those."

10:31:40AM 11 Ms. Varney. This is his wife discussing the signing.  
10:31:46AM 12 "I was even surprised. It was a surprise for me because  
10:31:50AM 13 at that moment he was lucid. He was good at that moment.  
10:31:53AM 14 I think he was waiting. I don't know. He would always  
10:31:56AM 15 tell me, 'Gloria' -- He would always worry about me. And  
10:31:59AM 16 I believe in God. I think God allowed him to sign it,  
10:32:01AM 17 because I can't explain how he was able to do it. He  
10:32:04AM 18 signed."

10:32:05AM 19 What that tells you is even she recognized -- This  
10:32:09AM 20 is not a well man sitting there. Somehow he was able to  
10:32:12AM 21 sign despite all the dizziness, the drowsiness, the  
10:32:17AM 22 blurred vision.

10:32:18AM 23 "And Dr. Kercheval told us when" -- This is the  
10:32:24AM 24 deposition of Ms. Varney. "And Dr. Kercheval told us when  
10:32:28AM 25 he was there your husband wasn't talking anymore. Do you

10:32:31AM 1 remember that?" Ms. Varney: "My husband couldn't talk,  
10:32:35AM 2 but during that time he was awake. He was awake, but he  
10:32:38AM 3 didn't talk. But at that moment, I don't understand, but  
10:32:40AM 4 he was awake."

10:32:43AM 5 "Was there any conversation that happened during this  
10:32:47AM 6 time when the priest and the notary were present in the  
10:32:50AM 7 hospital room when your husband signed this declaration?"  
10:32:54AM 8 Ms. Varney answers: "No, everyone was quiet. The priest  
10:32:58AM 9 was to his side. The notary was in front, watching. I  
10:33:01AM 10 was next to my husband. The lawyer was there. We were  
10:33:05AM 11 just looking at him. I was the one that was next to him,  
10:33:08AM 12 but we were just there, watching. The notary was watching  
10:33:12AM 13 everything. But no one talked." No one talked. "He just  
10:33:17AM 14 looked at me when they gave him the paper and he held the  
10:33:20AM 15 paper and then he signed. He signed and then he laid  
10:33:24AM 16 backwards."

10:33:25AM 17 So the evidence has shown he is unable to testify,  
10:33:31AM 18 because that's why they stopped his deposition and they  
10:33:33AM 19 cancelled the deposition. He could not speak and had not  
10:33:36AM 20 spoken for at least several days. He was unable to  
10:33:39AM 21 provide any information. He is heavily medicated.  
10:33:42AM 22 Mrs. Varney was shocked that he could even sit and look at  
10:33:46AM 23 the declaration. But we know he is on a hospital bed.  
10:33:49AM 24 But we will get to the hospital bed later. He is not  
10:33:52AM 25 capable of providing detailed descriptions of equipment,

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10:33:56AM 1 work practices, and the chemical composition of the  
10:33:59AM 2 materials. We know he is not able to provide that,  
10:34:01AM 3 because if he was able to provide that, they would have  
10:34:04AM 4 scheduled the deposition.

10:34:07AM 5 THE COURT: Counsel, you are making a closing  
10:34:09AM 6 argument here and taking more time than I anticipated  
10:34:14AM 7 would be necessary for opening statement.

10:34:17AM 8 MR. VEGA: I will wrap this up. You are going to  
10:34:23AM 9 see there is no printer. We don't know anything about how  
10:34:26AM 10 this declaration was created. In fact, when we tried to  
10:34:29AM 11 get information about how the declaration was created, and  
10:34:32AM 12 I'm sure we are going to hear about it on the stand, there  
10:34:35AM 13 was a claim of attorney-client work privilege, and also  
10:34:39AM 14 attorney-client privilege. Again, our position is all of  
10:34:45AM 15 that is waived, and it must be waived, and it was waived  
10:34:48AM 16 the moment they produced it.

10:34:49AM 17 I will go through this very quickly and just get to  
10:34:55AM 18 the end. There was no laptop. Again, I am just  
10:35:23AM 19 recounting what I have already gone through. I don't want  
10:35:26AM 20 to belabor it.

10:35:27AM 21 Here, I think one of the important things for the  
10:35:30AM 22 Court to determine, when we are going to decide whether  
10:35:34AM 23 this is a dying declaration or not, is just the  
10:35:38AM 24 spontaneity of it, does it give us the reliance of  
10:35:42AM 25 truthfulness? And this whole scene -- And we are going

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10:35:49AM 1 to go through it in detail. This whole scene that is  
10:35:52AM 2 orchestrated -- and the orchestration, your Honor -- and  
10:35:55AM 3 the level of -- just the theatrical production of calling  
10:36:00AM 4 a priest -- Literally they call a priest to the hospital  
10:36:04AM 5 on February 6th to witness the signing. "But you know  
10:36:08AM 6 what, he can't sign it today. Priest, come back  
10:36:13AM 7 tomorrow." And now the priest comes back tomorrow. The  
10:36:15AM 8 next day the priest is there. They call a notary. They  
10:36:18AM 9 have a notary there. They have everyone there. It is  
10:36:21AM 10 completely staged.

10:36:24AM 11 We have interrogatory responses from January 16th.  
10:36:29AM 12 The priest shows up 2/6. There is no notary on 2/6, so  
10:36:34AM 13 they have to send him back. The priest comes back again,  
10:36:37AM 14 and it is a complete do over.

10:36:41AM 15 In the end, this declaration is not admissible in  
10:36:44AM 16 this case for plaintiffs to defeat summary judgment. It  
10:36:48AM 17 cannot be relied upon by their experts. This is just  
10:36:52AM 18 another way of spinning an attorney declaration. This is  
10:36:57AM 19 simply an affidavit. Thank you, your Honor.

10:37:03AM 20 THE COURT: I don't know about order here, but  
10:37:06AM 21 you jumped up so I guess you're next. I indicated in the  
10:37:13AM 22 procedural order that we would -- if there was any  
10:37:18AM 23 question about it, that you follow the order you appear in  
10:37:22AM 24 the file. If you're next and nobody complains, that's  
10:37:28AM 25 fine with me.

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10:37:31AM 1 MS. WEGLARZ: Unless somebody wants to stand up  
10:37:33AM 2 first.

10:37:33AM 3 Your Honor, I just want to be brief about this, and  
10:37:36AM 4 put the focus on a different part of your Honor's order.  
10:37:43AM 5 Let me set this up first.

10:38:07AM 6 Your Honor, I would like to focus --

10:38:18AM 7 THE COURT: Give me your name again, please?

10:38:21AM 8 MS. WEGLARZ: Clare Weglarz on behalf of John  
10:38:26AM 9 Crane, Inc.

10:38:28AM 10 I want to focus on what is the basis for the dying  
10:38:34AM 11 declaration exception to the hearsay rule. This is, as  
10:38:38AM 12 your Honor knows, a rule that is based on common law. It  
10:38:43AM 13 goes back decades, centuries, 1700s.

10:38:47AM 14 The traditional theory is that no one would dare face  
10:38:52AM 15 the wrath of God with a lie on your lips. Therefore, what  
10:38:56AM 16 I am going to focus on right now is the crucial element of  
10:39:00AM 17 the awareness by the speaker when that statement is first  
10:39:07AM 18 spoken.

10:39:10AM 19 I will start with a 1933 Supreme Court case that we  
10:39:14AM 20 all sort of learned in law school, when we are talking  
10:39:17AM 21 about the dying declaration. I know it is a long time for  
10:39:20AM 22 most of us to remember law school. But *Shepard versus*  
10:39:24AM 23 *United States* talks about a woman who is poisoned with a  
10:39:27AM 24 lethal dose of arsenic, and she lingered in agony for  
10:39:31AM 25 weeks. During her lingering she uttered the statement,

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10:39:36AM 1 "Dr. Shepard," who is her husband, "poisoned me." Justice  
10:39:43AM 2 Cardozo did not find this to be a dying declaration,  
10:39:48AM 3 because, he said, even though she had been lingering in  
10:39:51AM 4 this long death, when she said this statement for the  
10:39:55AM 5 first time she did not speak as one who was actually dying  
10:40:01AM 6 at the time.

10:40:02AM 7 And I think the important quote that's taken out of  
10:40:05AM 8 this case, again, what I am going to focus on right now,  
10:40:09AM 9 is, "To make a dying declaration the declarant must have  
10:40:14AM 10 spoken without hope of recovery and in the shadow of  
10:40:17AM 11 impending death. The patient must have spoken with the  
10:40:21AM 12 consciousness of a swift and certain doom."

10:40:25AM 13 So what we have here is the dying declaration of  
10:40:31AM 14 Mr. Varney. As counsel before me pointed out, it does  
10:40:36AM 15 contain statements that had already been made for purposes  
10:40:40AM 16 of this litigation. They had already been spoken before  
10:40:45AM 17 the date this declaration was actually signed by  
10:40:49AM 18 Mr. Varney. Some of these statements were made at least  
10:40:54AM 19 as early as December 20th, 2017, because they are  
10:40:58AM 20 contained in the complaint that started this lawsuit.

10:41:01AM 21 Some of these statements were made as early as  
10:41:05AM 22 February 6th, 2017, when Mr. Varney had been seen by his  
10:41:13AM 23 pulmonologist, Dr. Sharma. Dr. Sharma notes and told us  
10:41:18AM 24 in his deposition that, even a year before, Mr. Varney had  
10:41:23AM 25 been telling him about these exposures to asbestos that he

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10:41:26AM 1 had at these shipyards. That's a year before. That's,  
10:41:32AM 2 let's see, six months before he is even diagnosed with  
10:41:35AM 3 mesothelioma. He is not diagnosed with mesothelioma until  
10:41:38AM 4 August of 2018 (sic).

10:41:41AM 5 What we do know from the facts of this case, when  
10:41:46AM 6 death finally does appear imminent, at least in the eyes  
10:41:50AM 7 of the physician, and when he is telling the family this,  
10:41:53AM 8 that is not until February 6th, 2018, a year after these  
10:41:58AM 9 statements had been first spoken by Mr. Varney.

10:42:02AM 10 I had mentioned before that these are litigation  
10:42:05AM 11 statements. I am not going to go through it all right  
10:42:07AM 12 now. I will save it for closing argument. But I do want  
10:42:10AM 13 to point out that this declaration does contain legal  
10:42:20AM 14 language. Paragraph 1, this is the legal language of the  
10:42:25AM 15 actual statute. This cannot be coming from Mr. Varney.  
10:42:28AM 16 He is not a lawyer. This is not his own statements.

10:42:33AM 17 Paragraphs 2 through 7, which is the remainder of the  
10:42:37AM 18 declaration, mirrors language that is observed in the  
10:42:41AM 19 complaint and in the interrogatory responses. And, again,  
10:42:47AM 20 in closing argument I will show the Court how these  
10:42:49AM 21 actually mirror each other.

10:42:52AM 22 As we go through this evidentiary hearing today, I  
10:42:55AM 23 think this is what the evidence is going to show: I think  
10:42:57AM 24 it is going to show that Dr. Sharma is being told by  
10:43:03AM 25 Mr. Varney -- these same exposure statements, a year

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10:43:05AM 1 before this declaration is even signed in the hospital.

10:43:11AM 2 Mr. Varney is diagnosed in August of 2017. Sometime  
10:43:16AM 3 between August and December counsel is retained. I assume  
10:43:21AM 4 when counsel is retained Mr. Varney is telling his counsel  
10:43:24AM 5 about his exposures to mesothelioma. Those exposures then  
10:43:27AM 6 are put into the complaint.

10:43:30AM 7 Mr. Varney goes into the hospital January 26, 2018.  
10:43:35AM 8 That's his last hospital stay. Mr. Kercheval --  
10:43:40AM 9 Dr. Kercheval told us at his deposition that when he went  
10:43:43AM 10 into the hospital there was the expectation that  
10:43:47AM 11 Mr. Varney was going to leave the hospital.

10:43:49AM 12 On February 2nd, the plaintiffs actually even set a  
10:43:56AM 13 deposition for Mr. Varney. This is when he is in the  
10:43:59AM 14 hospital. There is calendaring a deposition for a few  
10:44:03AM 15 days away, five, six days away. You don't calendar a  
10:44:07AM 16 deposition for someone who is on death's doorstep, that is  
10:44:12AM 17 going to be a swift -- a swift fate right there.

10:44:15AM 18 On February 6th, this is when Mr. Varney's doctor,  
10:44:22AM 19 Dr. Kercheval -- He is the person at the hospital who is  
10:44:24AM 20 taking care of him. This is when finally Dr. Kercheval  
10:44:28AM 21 says, this is when I realized he only has three to five  
10:44:32AM 22 days to live. I assume that this is knowledge imparted to  
10:44:35AM 23 the family.

10:44:36AM 24 Before that date, just two days before, on  
10:44:39AM 25 February 4th, they were preparing for Mr. Varney to leave

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10:44:43AM 1 the hospital, to go into hospice, and to even get a  
10:44:47AM 2 feeding tube. Mr. Varney agreed to a feeding tube.  
10:44:50AM 3 Again, these are not things a person does if they believe  
10:44:53AM 4 that death is going to be swift and at that moment, like  
10:44:56AM 5 the old case law tells us we are supposed to look at these  
10:45:01AM 6 situations and circumstances under.

10:45:04AM 7 Mr. Varney dies on February 8th. We have the  
10:45:09AM 8 declaration now, the day before he dies.

10:45:12AM 9 The only thing I want to say about the actual signing  
10:45:15AM 10 of the declaration, because I think counsel covered a lot  
10:45:18AM 11 of it, is that we don't even know if Mr. Varney on the  
10:45:23AM 12 deathbed actually read the declaration.

10:45:25AM 13 On Friday, two or three days ago, we had the  
10:45:28AM 14 opportunity to depose the notary public, who acknowledged  
10:45:35AM 15 the declaration. And I don't think your Honor -- I'm sure  
10:45:38AM 16 you have not had the pleasure of reading that -- portions  
10:45:41AM 17 of that deposition. We will provide it to you. My only  
10:45:45AM 18 point with that is that it was only an acknowledgment.  
10:45:49AM 19 Mr. Parris, the notary public, told us an acknowledgment  
10:45:55AM 20 is merely saying the identity of the signer is who he is.  
10:45:59AM 21 There is no requirement that a person read the actual  
10:46:02AM 22 document before that signature is acknowledged. I think  
10:46:08AM 23 that is a problem, because we don't know if he read it at  
10:46:11AM 24 all. We just don't know.

10:46:13AM 25 And, again, the statements in this declaration, what

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10:46:17AM 1 the evidence is going to show today, is those statements  
10:46:20AM 2 were spoken not for the first time on February 7th. They  
10:46:24AM 3 were spoken in interrogatory responses on January 11th, a  
10:46:28AM 4 month before. They were spoken in the complaint two  
10:46:31AM 5 months before.

10:46:33AM 6 Maria, his wife, at her deposition, she told us that  
10:46:40AM 7 she had conversations with Mr. Varney about the exposures  
10:46:45AM 8 and -- what's in the declaration three to four months  
10:46:49AM 9 before he died.

10:46:51AM 10 At another point in her deposition she said that she  
10:46:53AM 11 had conversations with Mr. Varney about his asbestos  
10:46:59AM 12 exposures at the shipyards even before he was diagnosed.

10:47:04AM 13 And, again, Dr. Sharma, they had extensive  
10:47:07AM 14 conversations about the exact same statements that are  
10:47:12AM 15 made in that declaration a year later.

10:47:15AM 16 I think the crucial line that we need to be aware of  
10:47:20AM 17 in this hearing today is to the right of that red line,  
10:47:25AM 18 what statements were made for the first time when death  
10:47:28AM 19 became imminent. I think it becomes imminent, based on  
10:47:32AM 20 the evidence that we have in this record, around  
10:47:36AM 21 February 6th. I think that's being conservative. It  
10:47:39AM 22 could have been a little bit later. We know it is not  
10:47:41AM 23 February 2nd, because this is when they are trying to plan  
10:47:44AM 24 the deposition.

10:47:45AM 25 We know it is not February 4th, because, again, this

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10:47:49AM 1 is when Dr. Kercheval is trying to get him out of the  
10:47:52AM 2 hospital, and he is agreeing to the feeding tube and doing  
10:47:56AM 3 measures that you don't do to a person that is about to  
10:48:00AM 4 die right then.

10:48:02AM 5 It's close to February 6th. This is when  
10:48:08AM 6 Dr. Kercheval thinks there are three to five days to live.  
10:48:12AM 7 I don't know if that means -- It is hard with the case  
10:48:15AM 8 law knowing exactly what "imminent" is. Three to five  
10:48:18AM 9 days, I think, conservatively, that could be seen as  
10:48:21AM 10 imminent.

10:48:23AM 11 We know on February 7th -- That is the only time in  
10:48:27AM 12 the record we actually have a declaration of someone  
10:48:30AM 13 saying death is imminent, on February 7th. But, again, I  
10:48:34AM 14 will be conservative.

10:48:36AM 15 And so, again, on the timeline -- I think what we  
10:48:39AM 16 need to be focused on today, under that earlier  
10:48:43AM 17 jurisprudence, the 1930s, the 1700s kind of cases where  
10:48:48AM 18 this rule comes from, is when statements are made for the  
10:48:51AM 19 first time when death becomes imminent.

10:48:56AM 20 Thank you, your Honor. I appreciate your time today.

10:49:01AM 21 THE COURT: It is just about time for a break.  
10:49:03AM 22 Anyone else want to make an opening statement? Okay. We  
10:49:12AM 23 will proceed with the evidence after a short break. We  
10:49:14AM 24 will reconvene at 11:00 by the courtroom clock.

11:00:22AM 25 (Recessed.)

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11:02:41AM 1 THE COURT: You may call your first witness.

11:02:43AM 2 MR. ADAMS: Thank you, your Honor. The  
11:02:45AM 3 plaintiffs call as their first witness Dr. Ramit Sharma.  
11:02:50AM 4 Your Honor, this is a video. It is sort of a longer  
11:02:53AM 5 video. It is an hour and 19 minutes.

11:02:57AM 6 THE COURT: Really?

11:02:59AM 7 MR. ADAMS: Yes. We only have an hour and a half  
11:03:01AM 8 of video, total. We have two videos, a live witness, a  
11:03:05AM 9 read, and two declarations. It is both sides'  
11:03:12AM 10 designations -- video, so it is not as if they are going  
11:03:16AM 11 to have to play the same video in their case. We are  
11:03:19AM 12 going to play the whole thing now. But it is a longer  
11:03:21AM 13 video.

11:03:22AM 14 MS. JOHNSON: Your Honor, Malika Johnson. My  
11:03:26AM 15 concern is, as I noted earlier, that we have --

11:03:29AM 16 THE COURT: Speak into the mic, please.

11:03:32AM 17 MS. JOHNSON: Plaintiffs served their  
11:03:35AM 18 designations on all of the defendants. The defendants  
11:03:37AM 19 have each countered and objected to portions of  
11:03:40AM 20 plaintiffs' proposed designations.

11:03:43AM 21 Your Honor has not seen those transcripts, because  
11:03:45AM 22 plaintiff did not file them with the Court. Your Honor  
11:03:49AM 23 has not had the opportunity to rule on any of the proposed  
11:03:52AM 24 objections.

11:03:54AM 25 What I would request, in the event that your Honor is

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11:03:58AM 1 prepared to let them proceed with a witness that they have  
11:04:00AM 2 not been able to show that they could not get here to  
11:04:03AM 3 testify live today, then I would request that your Honor  
11:04:07AM 4 be given the transcript with all of the highlights for  
11:04:11AM 5 each proposed parties' designations, counters, and  
11:04:16AM 6 objections, and rulings be made prior to this video being  
11:04:20AM 7 played.

11:04:21AM 8 THE COURT: Are there a lot of objections?

11:04:23AM 9 MR. ADAMS: They have objected to every single  
11:04:25AM 10 word in every single deposition. Your Honor, my  
11:04:28AM 11 suggestion would be that we start with the video, we get  
11:04:31AM 12 going on the hearing, and if they have real objections to  
11:04:34AM 13 make during the video, they can stand up, we can pause it,  
11:04:38AM 14 and you can make a ruling as though the witness is on the  
11:04:40AM 15 stand.

11:04:40AM 16 MS. WEGLARZ: Alternatively, we can just give you  
11:04:42AM 17 the transcript.

11:04:43AM 18 THE COURT: I can read a lot faster than I can  
11:04:46AM 19 watch a video.

11:04:48AM 20 MR. ADAMS: We have the transcripts marked and  
11:04:50AM 21 ready to go.

11:04:51AM 22 THE COURT: I would prefer to proceed that way,  
11:04:54AM 23 and then I can mark my objections -- rulings on objections  
11:04:59AM 24 as I go.

11:05:01AM 25 MR. ADAMS: Great. No problem. May I approach,

11:05:09AM 1 your Honor?

11:05:09AM 2 THE COURT: I will --

11:05:11AM 3 MS. JOHNSON: I don't believe we have been given  
11:05:13AM 4 a copy of that, your Honor.

11:05:17AM 5 MS. WEGLARZ: We haven't seen --

11:05:19AM 6 MS. JOHNSON: We haven't been given a copy. We  
11:05:24AM 7 have not been given a copy of what has just been handed to  
11:05:28AM 8 you.

11:05:29AM 9 THE COURT: I don't know what this is, so I don't  
11:05:32AM 10 know if you have a copy or not.

11:05:34AM 11 MR. ADAMS: Your Honor --

11:05:42AM 12 MS. WEGLARZ: We just took a break, but this is  
11:05:45AM 13 something we could deal with in about 15 minutes, to make  
11:05:48AM 14 sure everything is in here, and then just give it to you,  
11:05:51AM 15 and you can look at it later.

11:05:53AM 16 MR. ADAMS: Your Honor, these are all of the  
11:05:56AM 17 objections from all of the defendants marked on a  
11:05:59AM 18 transcript for all of the depositions in this case.

11:06:03AM 19 We received -- I am trying not to wade into the  
11:06:08AM 20 lawyers' fighting about what actually happened, but we  
11:06:10AM 21 received objections late last night from many, many  
11:06:15AM 22 defendants. We stayed up all night marking the  
11:06:18AM 23 transcripts, doing all of the work, and they are ready to  
11:06:21AM 24 go. And so we would like to proceed with this hearing.  
11:06:27AM 25 We have given them a copy, and we are ready to go.

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11:06:33AM 1 MR. CRAIG: Your Honor, Kevin Craig. I don't  
11:06:35AM 2 believe Local Rule 32(e) has been followed here. We did  
11:06:38AM 3 not receive the transcripts from plaintiff with their  
11:06:42AM 4 testimony highlighted until Friday afternoon. The first  
11:06:46AM 5 batch came in at 1:15, and there was a follow up at 4:15.  
11:06:51AM 6 That was the first time we had gotten the transcripts that  
11:06:54AM 7 are required under Rule 32(e).

11:06:57AM 8 We worked over the weekend, we got them to them  
11:07:01AM 9 yesterday. I have not seen the final markup that is  
11:07:07AM 10 supposed to have everything in it, including all of the  
11:07:09AM 11 objections. We would object to the use of these  
11:07:13AM 12 deposition transcripts.

11:07:16AM 13 MR. ADAMS: Your Honor, we had three and a half  
11:07:18AM 14 weeks' notice of this hearing. We took three depositions  
11:07:20AM 15 and got declarations and talked to every witness. We did  
11:07:24AM 16 everything. We subpoenaed all the witnesses, we took all  
11:07:27AM 17 the depositions, we got all the declarations. They did  
11:07:31AM 18 nothing. We sent them what we could designate as quick as  
11:07:34AM 19 we could. They returned it to us. All of them returned  
11:07:36AM 20 it separately without a single document being marked. We  
11:07:40AM 21 collated all of that into one document as fast as we  
11:07:44AM 22 could, even for depositions taken last Friday. And we are  
11:07:48AM 23 ready to proceed.

11:07:49AM 24 They are not waiving anything. The Court has all of  
11:07:52AM 25 the objections. They can make any objections they want as

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11:07:55AM 1 the video is played. We would like to proceed with this  
11:07:58AM 2 hearing.

11:07:59AM 3 MS. JOHNSON: Your Honor, as your Honor knows, it  
11:08:02AM 4 is plaintiffs' burden. We don't have a burden here at  
11:08:04AM 5 this evidentiary hearing today. While they may have  
11:08:08AM 6 noticed depositions, they have failed time and again to  
11:08:12AM 7 comply with the local rules. What has been handed to you  
11:08:17AM 8 was simultaneously handed to us for the first time today.

11:08:23AM 9 MS. MacKENZIE: Your Honor, this is Nicole  
11:08:25AM 10 MacKenzie on behalf of Parker-Hannifin. I wanted to add,  
11:08:29AM 11 in addition to what Ms. Johnson said, not only is it  
11:08:32AM 12 plaintiffs' burden, it's -- an evidentiary hearing was  
11:08:36AM 13 ordered, and I think it was clear from the Court's order  
11:08:39AM 14 that it was anticipated -- the Court was anticipating  
11:08:43AM 15 hearing from live witnesses, not deposition testimony,  
11:08:48AM 16 much of which had already been presented in the written  
11:08:52AM 17 submissions.

11:08:54AM 18 As the written submissions indicate, some of the  
11:08:57AM 19 questions that were asked were objected to and refused --  
11:09:02AM 20 plaintiffs' counsel refused to allow the witness to  
11:09:05AM 21 respond on the basis of attorney-client privilege. The  
11:09:08AM 22 whole point of having this evidentiary hearing was to  
11:09:12AM 23 allow the Court to inquire, and also to rule on those  
11:09:17AM 24 kinds of objections, and to order the witnesses to answer,  
11:09:20AM 25 if necessary.

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11:09:22AM 1 So we would actually object to the use of deposition  
11:09:26AM 2 testimony at all, particularly given that, as counsel  
11:09:30AM 3 noted, we have known about this hearing for three and a  
11:09:34AM 4 half weeks, and they could have -- if they intended to  
11:09:37AM 5 proceed on deposition testimony they could have sought  
11:09:40AM 6 leave of the Court, and they could have set up a procedure  
11:09:43AM 7 for having those submissions exchanged and objected to,  
11:09:48AM 8 and everything submitted to the Court prior to the hearing  
11:09:51AM 9 so that the Court could rule on those. That has not  
11:09:54AM 10 happened. And for that reason we think that none of those  
11:10:00AM 11 designations should be allowed.

11:10:30AM 12 MS. JOHNSON: Your Honor, it is my understanding  
11:10:32AM 13 that the copy of what has been given to you does not even  
11:10:35AM 14 have any of the defendants' objections, in terms of the  
11:10:38AM 15 basis of the objection.

11:13:32AM 16 THE COURT: Who is Mr. Harris who was conducting  
11:13:35AM 17 this examination?

11:13:38AM 18 MR. ADAMS: I'm sorry, your Honor?

11:13:40AM 19 MS. JOHNSON: Mr. Harris is not present in the  
11:13:42AM 20 courtroom.

11:13:42AM 21 THE COURT: Is he part of your team?

11:13:45AM 22 MS. JOHNSON: He is with Williams Kastner.

11:13:50AM 23 THE COURT: One at a time. And speak into the  
11:13:53AM 24 mic.

11:13:53AM 25 MS. JOHNSON: He is with Williams Kastner, with

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11:13:57AM 1 their office.

11:13:57AM 2 THE COURT: He is a defense lawyer?

11:14:00AM 3 MS. JOHNSON: He is.

11:14:34AM 4 THE COURT: Well, a quick look at this tells me  
11:14:36AM 5 that there is a great deal in here that is not really  
11:14:40AM 6 relevant to the issues that we have to decide. I take it,  
11:15:38AM 7 from a quick look at this, that objections were made after  
11:15:43AM 8 the transcript was prepared rather than on the face of the  
11:15:49AM 9 deposition; is that correct?

11:15:53AM 10 MR. ADAMS: Correct. There are a few objections  
11:15:56AM 11 actually in the transcript made at the time of the  
11:15:58AM 12 deposition, but very few. Almost all of the objections  
11:16:04AM 13 were not made at the deposition, which I believe is a  
11:16:08AM 14 waiver, at least to the form of the question.

11:16:17AM 15 MS. JOHNSON: And, your Honor, all objections,  
11:16:20AM 16 aside from form, were reserved.

11:16:26AM 17 THE COURT: I am thinking in terms of how hard it  
11:16:29AM 18 is to rule on objections.

11:16:39AM 19 You know, I anticipated five or six witnesses, and  
11:16:43AM 20 that we would be halfway through them by now. There is  
11:16:50AM 21 too much stuff in this deposition that is not relevant to  
11:16:55AM 22 the key issues in this case. The key issues are what  
11:17:01AM 23 happened at the time this document was signed.

11:17:09AM 24 There is a lot of evidence already in the record  
11:17:12AM 25 about Mr. Varney's physical condition at the time. You

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11:17:30AM 1 know, I don't want to go through this. This is more than  
11:17:33AM 2 you need to show. I would be interested in the doctor's  
11:17:41AM 3 opinion, and in what happened just on the days leading up  
11:17:48AM 4 to this signing.

11:17:52AM 5 But this goes, of course, as usual, into the doctor's  
11:17:55AM 6 history and background, and a bunch of stuff that I really  
11:18:00AM 7 don't care a lot about for purposes of this hearing. So  
11:18:06AM 8 you are giving me a document that seems to me, while some  
11:18:12AM 9 of it is relevant, a great deal is not relevant for this  
11:18:17AM 10 hearing.

11:18:22AM 11 I would suggest you want to try again, and go ahead  
11:18:32AM 12 with another witness.

11:18:39AM 13 MR. ADAMS: Your Honor, I understand. We have  
11:18:44AM 14 five or six witnesses. This is by far the longest  
11:18:49AM 15 witness. In my opinion it is also by far the most  
11:18:52AM 16 important witness for our case. I thought this would go a  
11:18:57AM 17 lot quicker, as well. I understand that concern.

11:19:04AM 18 For example, for the notary, I think the video is --  
11:19:16AM 19 it's shorter. We have declarations for the priest that we  
11:19:20AM 20 intend to just publish and read into the record. That's a  
11:19:24AM 21 five-minute thing. We can do that now.

11:19:28AM 22 THE COURT: You say a declaration. Not subject  
11:19:32AM 23 to cross-examination?

11:19:34AM 24 MR. ADAMS: He is not subject to  
11:19:36AM 25 cross-examination at the hearing. He was available for

11:19:41AM 1 cross-examination. He was subpoenaed, but he has not been  
11:19:44AM 2 deposed. But certainly for purposes of deciding a summary  
11:19:47AM 3 judgment motion, a declaration would be admissible.  
11:19:54AM 4 That's why we have used declarations for some of the  
11:19:58AM 5 witnesses and video depositions for some of the others.

11:20:05AM 6 MS. WEGLARZ: Your Honor, John Crane would object  
11:20:07AM 7 to the admission of the declaration, especially in this  
11:20:10AM 8 particular hearing where a declaration is at issue.

11:20:14AM 9 MS. JOHNSON: I would just note that I don't  
11:20:16AM 10 believe he was ever subpoenaed. As I noted previously,  
11:20:22AM 11 the defense does not have a burden here. We had no burden  
11:20:26AM 12 to bring him here today and produce him as a live witness.  
11:20:30AM 13 If plaintiff intended to use his testimony, then it was  
11:20:34AM 14 their obligation to put him on the stand and make him  
11:20:37AM 15 subject to cross-examination rather than offering the  
11:20:40AM 16 Court yet another hearsay document without exception.

11:20:48AM 17 MR. CRAIG: Your Honor, the issue here today is  
11:20:50AM 18 the evidentiary hearing on the admissibility of evidence  
11:20:53AM 19 on summary judgment. This isn't the summary judgment  
11:20:57AM 20 hearing.

11:20:57AM 21 THE COURT: Well, it's for both the summary  
11:21:01AM 22 judgments pending and for trial. I think that was clear  
11:21:10AM 23 in the orders I issued. You know, things may be  
11:21:16AM 24 admissible for one thing and not for another.

11:21:28AM 25 MR. ADAMS: Your Honor, one solution potentially



11:21:30AM 1 is we can skip ahead to Page 17 of Dr. Sharma's  
11:21:35AM 2 deposition. That skips who he is, his qualifications,  
11:21:38AM 3 some of the background about him, if the Court does not  
11:21:42AM 4 need that evidence. It gets right into the medical  
11:21:44AM 5 records and his opinions for February 7th, 2018.

11:21:50AM 6 THE COURT: Well, that's what you need to do, but  
11:21:53AM 7 I don't think we should do it without advance notice of  
11:21:56AM 8 what pages you are going to submit and so forth.

11:22:01AM 9 I mean, I am just here to work and to do this. I  
11:22:11AM 10 don't want to do a bunch of extra stuff that just isn't  
11:22:17AM 11 necessary to these narrow issues.

11:22:21AM 12 Let me suggest that you resubmit this first  
11:22:27AM 13 deposition. I will read it rather than have it played.  
11:22:35AM 14 But you should notify the defendants of what portions of  
11:22:38AM 15 the deposition you think should be read so they can make  
11:22:42AM 16 objections here in court if they have objections to what  
11:22:50AM 17 the pared down version is. My gosh, you knock 17 pages  
11:22:58AM 18 off just like that. I think there is a lot more that are  
11:23:02AM 19 not necessary to your position.

11:23:04AM 20 Let's go with the next witness.

11:23:13AM 21 MR. ADAMS: We have the testimony of the notary.  
11:23:20AM 22 That is Stephan J. Parris. That is also a video, however.

11:23:26AM 23 THE COURT: All right.

11:23:26AM 24 MS. JOHNSON: Your Honor, Malika Johnson. It is  
11:23:31AM 25 the same exact issue, they are proposing to play a video

11:23:37AM 1 for this Court, and we have not seen the portions that  
11:23:40AM 2 they intend to play, nor have we had the opportunity for  
11:23:45AM 3 your Honor to rule on the objections that we specifically  
11:23:48AM 4 gave to counsel.

11:23:51AM 5 He asked for the objections yesterday by noon. They  
11:23:55AM 6 took the notary deposition on Friday. Counsel sent us  
11:23:59AM 7 their designations on Saturday, in the afternoon. They  
11:24:03AM 8 asked for the defendants to provide them with counters and  
11:24:08AM 9 objections yesterday prior to noon. We did that. We  
11:24:12AM 10 provided it to them, I believe it was like 11:30,  
11:24:19AM 11 something like that. Nonetheless, they made no move to  
11:24:22AM 12 file that with this Court so your Honor would have a copy  
11:24:24AM 13 of that and have the opportunity to rule on all these  
11:24:27AM 14 issues prior to them contemporaneously trying to play them  
11:24:31AM 15 in the hearing.

11:24:33AM 16 THE COURT: How long is this deposition?

11:24:35AM 17 MR. ADAMS: This deposition, I think, is 40  
11:24:39AM 18 minutes. The vast, vast majority of it is defense  
11:24:47AM 19 designations, not plaintiffs'. I think my examination of  
11:24:52AM 20 the witness was maybe 15 pages total. Quite short.

11:25:03AM 21 There were a number of statements just made that  
11:25:06AM 22 simply aren't true, but I really have no interest in  
11:25:10AM 23 saying whose fault it is. I am simply trying to present  
11:25:14AM 24 the evidence to the Court.

11:25:18AM 25 I am not sure what else to do, your Honor. We did

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11:25:21AM 1 our best. We took the depositions as fast as we could, we  
11:25:26AM 2 cut the video as fast as we could, and we sent them what  
11:25:29AM 3 we were going to play as fast as we could. We are here  
11:25:33AM 4 having done a tremendous amount of work in a short amount  
11:25:35AM 5 of time trying to get this information to the Court.  
11:25:37AM 6 There is no jury here, so if they have an objection they  
11:25:41AM 7 can stand up and make it, and the Court can rule. I'm  
11:25:44AM 8 sorry, your Honor. I wish --

11:25:46AM 9 THE COURT: I understand. Are there objections  
11:25:52AM 10 to the body of the information in the deposition, or is it  
11:25:59AM 11 to things like leading questions and so forth?

11:26:04AM 12 MS. JOHNSON: I would say that there's objections  
11:26:08AM 13 as to the form of the questions asked as well as the  
11:26:12AM 14 responses, because the questions are seeking information  
11:26:15AM 15 that the witness does not have personal knowledge of.  
11:26:23AM 16 They are repetitive questions over and over seeking the  
11:26:25AM 17 same sorts of answers.

11:26:27AM 18 The counter-designations that have been marked in  
11:26:29AM 19 this transcript are when defendants did have the  
11:26:34AM 20 opportunity to really inquire as to the witness' memory of  
11:26:39AM 21 the events, of which he has none.

11:26:44AM 22 THE COURT: Go ahead with the deposition and make  
11:26:47AM 23 objections as you wish. If objections are made, stop the  
11:26:57AM 24 tape.

25 (At this time the deposition of Stephan Parris was

1 played.)

2 DIRECT EXAMINATION

3 By Mr. Adams:

4 Q. Good morning, Mr. Parris.

5 A. Good morning.

6 Q. My name is Ben Adams. I am one of the lawyers who  
7 represent the family in this lawsuit of someone named  
8 Donald Varney. Okay?

9 A. Yes.

10 Q. Can you tell us your full name for the record?

11 A. Steven Julius Parris.

12 Q. Will you spell your full name for us?

13 A. S-T-E-P-H-A-N, J-U-L-I-U-S, P-A-R-R-I-S.

14 Q. Appreciate that. I want to ask you a few questions  
15 about your background, just a few. How old are you?

16 A. Sixty-six years of age.

17 Q. What is your date of birth?

18 A. 12/2/1952.

19 Q. Are you married?

20 A. Yes, I am.

21 Q. Do you have any children?

22 A. I have two adult children.

23 Q. I understand that you are a notary?

24 A. I am.

25 Q. Do you have another profession?

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11:28:44AM 1

A. I do.

11:28:45AM 2

Q. What is that?

11:28:45AM 3

A. I am an IT person for a bank.

11:28:52AM 4

Q. How long have you been a notary?

11:28:55AM 5

A. It will be two years come September.

11:28:59AM 6

Q. Can you tell us, roughly, when you first became a notary?

11:29:04AM 7

11:29:05AM 8

A. September 25th, 2017.

11:29:08AM 9

Q. Can you give us a little bit of a background on the process that you went through to become a notary?

11:29:11AM 10

11:29:15AM 11

A. Well, you go to the Secretary of State of Arizona, and you fill out a request to become a notary, and you pay a fee, and you submit that request to the state, and you mail them the check. They do a background check, and then they either approve or deny your request to be a notary.

11:29:21AM 12

11:29:28AM 13

11:29:33AM 14

11:29:38AM 15

11:29:42AM 16

If you're approved, you then get a certificate, which I have. And you also must be bonded. So you go to a bonding company and you pay them a fee and then you become bonded.

11:29:45AM 17

11:29:51AM 18

11:29:54AM 19

11:29:56AM 20

And they also have a class that you attend so you know the rules of the game.

11:30:01AM 21

11:30:02AM 22

Q. And if I understand your testimony, the state of Arizona is the entity that you apply to to become a notary?

11:30:07AM 23

11:30:12AM 24

11:30:12AM 25

A. The Secretary of State's office, correct.

11:30:14AM 1 Q. Do you remember how long the process took to get  
11:30:22AM 2 notarized -- or to get your notary? Is it a license or a  
11:30:26AM 3 commission?  
11:30:26AM 4 A. It's a certificate. You become an agent of the  
11:30:30AM 5 state.  
11:30:30AM 6 Q. How long did that process take?  
11:30:32AM 7 A. I would say two to three weeks.  
11:30:34AM 8 Q. And since September of 2017, have you always had your  
11:30:43AM 9 notary certificate?  
11:30:44AM 10 A. Yes.  
11:30:44AM 11 Q. Has it ever been suspended?  
11:30:47AM 12 A. Never.  
11:30:48AM 13 Q. Has it ever been revoked?  
11:30:50AM 14 A. Never.  
11:30:50AM 15 Q. Have you ever had any kind of discipline of any kind  
11:30:53AM 16 with respect to your notary certificate?  
11:30:55AM 17 A. None whatsoever.  
11:30:57AM 18 Q. Have you ever been subpoenaed?  
11:30:59AM 19 A. Never.  
11:31:00AM 20 Q. Other than this case?  
11:31:02AM 21 A. Never.  
11:31:02AM 22 Q. Have you ever refused to notarize something?  
11:31:06AM 23 A. Yes.  
11:31:10AM 24 Q. Okay. Without getting into too much detail, why  
11:31:15AM 25 would you refuse to notarize something?

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11:31:17AM 1 A. Lack of proper identification.

11:31:19AM 2 Q. And so would it be a true statement that you don't  
11:31:27AM 3 just notarize everything anyone asks you to.

11:31:32AM 4 MS. JOHNSON: Objection. Leading.

11:31:34AM 5 Mr. Adams:

11:31:35AM 6 Q. A few questions about the purpose of getting a  
11:31:37AM 7 document notarized. Do you have some understanding?

11:31:40AM 8 MR. VEGA: Excuse me. Are you going to stop so  
11:31:42AM 9 we can get a ruling?

11:31:50AM 10 THE COURT: I'm sorry. I missed what the  
11:31:52AM 11 objection is to here.

11:31:55AM 12 MS. JOHNSON: The objection was when he -- when  
11:32:02AM 13 the question was, "And so it would be a true statement  
11:32:05AM 14 that you don't just notarize everything anyone asks to  
11:32:09AM 15 you?" The objection is leading and argumentative.

11:32:18AM 16 MR. CRAIG: Also relevance and unfairly  
11:32:20AM 17 prejudicial.

11:32:22AM 18 THE COURT: The question was leading in form and  
11:32:25AM 19 not appropriate. On the other hand, it is harmless, and  
11:32:28AM 20 the answer may stand. Let's go.

11:32:32AM 21 By Mr. Adams:

11:32:33AM 22 Q. Based on some of the classes -- I think you said you  
11:32:36AM 23 took a class -- or your experience, or your knowledge as a  
11:32:38AM 24 notary about why people get documents notarized?

11:32:43AM 25 A. In lieu of appearing in person, identification needs

11:32:48AM 1 to be certified that the person who is signing that  
11:32:51AM 2 document is in fact that person.

11:32:54AM 3 Q. Do you have any understanding about why people get  
11:32:59AM 4 documents notarized?

11:33:02AM 5 A. Other than what I just said, no, I do not.

11:33:05AM 6 Q. What, if anything, if you know, does a notary seal on  
11:33:11AM 7 a document indicate about the trustworthiness of the  
11:33:18AM 8 document? What, if anything, does a notary seal on a  
11:33:22AM 9 document indicate about the trustworthiness of the  
11:33:25AM 10 document?

11:33:26AM 11 A. It does not speak to the trustworthiness of the  
11:33:29AM 12 document. The seal only speaks to proper identification  
11:33:34AM 13 of the signer.

11:33:36AM 14 Q. Would you notarize a document if the signer was  
11:33:45AM 15 incapacitated?

11:33:46AM 16 A. Never. Would not, cannot.

11:33:49AM 17 Q. Why not?

11:33:50AM 18 A. Because it is a matter of lucidity. If a person is  
11:33:53AM 19 not lucid, then they obviously do not know what they are  
11:33:57AM 20 doing, what they are signing. So I cannot and will not  
11:34:01AM 21 and have not.

11:34:01AM 22 Q. If a person was unconscious -- would you notarize a  
11:34:07AM 23 document if they were out cold?

11:34:12AM 24 A. I don't know how that would be possible.

11:34:14AM 25 Q. Right.



11:34:15AM 1 A. So, no.

11:34:16AM 2 Q. If a person was unable to respond to you, would you  
11:34:26AM 3 notarize a document?

11:34:27AM 4 A. Absolutely not.

11:34:28AM 5 Q. Why not?

11:34:29AM 6 A. Because if they are unable to respond, I don't know  
11:34:32AM 7 if they are lucid or not.

11:34:34AM 8 Q. I am going to attach as Exhibit No. 2 a declaration  
11:34:39AM 9 of Donald Varney, dated February 7th, 2018. And I will  
11:34:47AM 10 hand that to the witness.

11:34:54AM 11 A. That is my stamp. That is my signature.

11:34:58AM 12 Q. On the second page of that document there is a notary  
11:35:02AM 13 stamp, correct?

11:35:03AM 14 A. Correct.

11:35:04AM 15 Q. Whose -- and you just told me, but I have to ask a  
11:35:07AM 16 question, whose notary seal is that?

11:35:13AM 17 A. Mine.

11:35:14AM 18 Q. Can you tell us whether or not this is a document  
11:35:19AM 19 that you notarized on February 7th, 2018?

11:35:22AM 20 A. It absolutely is.

11:35:24AM 21 Q. And so you would not have added your notary seal to  
11:35:34AM 22 this document if the individual -- Strike that.

11:35:39AM 23 Who is the individual who signed the document?

11:35:42AM 24 A. Donald Varney.

11:35:44AM 25 Q. And based on your prior testimony, you would not have

\_\_\_\_\_  
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11:35:49AM 1 added your seal to this document if Mr. Varney was  
11:35:55AM 2 incapacitated, unable to respond, or unconscious, correct?

11:36:00AM 3 MS. JOHNSON: Objection. Leading.

11:36:02AM 4 By Mr. Adams:

11:36:02AM 5 Q. Do you have any specific --

11:36:06AM 6 THE COURT: Who is questioning the witness?

7 MR. ADAMS: (Raising hand.)

11:36:13AM 8 THE COURT: The objection is sustained. Leading  
11:36:20AM 9 question.

11:36:21AM 10 By Mr. Adams:

11:36:22AM 11 Q. -- memory of Mr. Varney?

11:36:23AM 12 A. I do not.

11:36:24AM 13 Q. Do you have any idea how many documents you have  
11:36:34AM 14 notarized since --

11:36:35AM 15 A. Since Mr. Varney?

11:36:37AM 16 Q. Yeah.

11:36:38AM 17 A. I would say probably 400, 450.

11:36:42AM 18 Q. Can you tell us, based on your own specific memory,  
11:36:49AM 19 Mr. Varney's condition on February 7th, 2018?

11:36:53AM 20 A. Unfortunately, I cannot. I have no memory whatsoever  
11:36:58AM 21 of Mr. Varney.

11:36:59AM 22 Q. I want you to assume that we have either obtained  
11:37:03AM 23 declarations or deposed the other individuals in --

11:37:09AM 24 MS. JOHNSON: Objection. Calls for hearsay.  
11:37:13AM 25 Speculation. Foundation.

11:37:18AM 1 MR. CRAIG: Improper hypothetical. Assumes  
11:37:21AM 2 facts. Relevance. Unduly prejudicial.

11:37:24AM 3 THE COURT: I didn't hear the whole question.

11:37:26AM 4 MS. JOHNSON: The whole question was: "Okay. I  
11:37:29AM 5 want you to assume that we have either obtained  
11:37:32AM 6 declarations or deposed the other individuals in the room  
11:37:35AM 7 when Mr. Varney signed this document."

11:37:44AM 8 THE COURT: I think that is a reasonable  
11:37:46AM 9 assumption. What's the next question?

11:37:50AM 10 MS. JOHNSON: "And those individuals testified."  
11:37:54AM 11 And then it goes on to state hearsay and stuff that  
11:38:01AM 12 Mr. Parris would never know because he doesn't have any  
11:38:04AM 13 recollection of what happened in the room.

11:38:07AM 14 MR. ADAMS: The actual question, your Honor: "Do  
11:38:10AM 15 you have any information to dispute that?" And the  
11:38:12AM 16 witness says, "No." That's where it's going.

11:38:15AM 17 THE COURT: Well, the objection is overruled.  
11:38:20AM 18 By Mr. Adams:

11:38:23AM 19 Q. -- when Mr. Varney signed this document. Okay?

11:38:25AM 20 A. Um-hum. Yes.

11:38:26AM 21 Q. And those individuals testified that Mr. Varney sat  
11:38:29AM 22 up in bed, opened his eyes, held the document, appeared to  
11:38:33AM 23 read the document, appeared to understand the document,  
11:38:37AM 24 and then signed it himself. Are you with me?

11:38:41AM 25 A. Yes.

11:38:41AM 1 Q. Do you have any information today to dispute that?

11:38:43AM 2 A. I do not.

11:38:44AM 3 Q. The fact that your notary symbol is on the document,

11:38:50AM 4 is that consistent or inconsistent with the facts I have

11:38:52AM 5 just asked you to assume?

11:38:53AM 6 A. It is consistent.

11:38:55AM 7 Q. Why is it consistent?

11:38:56AM 8 A. Because I don't notarize people who aren't lucid and

11:38:59AM 9 don't understand what they are doing.

11:39:02AM 10 Q. Those are all my questions. I'm sorry. I forgot one

11:39:05AM 11 thing.

11:39:05AM 12 You have brought your book with you. What is that?

11:39:08AM 13 A. That's my official notary journal.

11:39:13AM 14 Q. Is there an entry in that journal for the date, time,

11:39:17AM 15 and location where you notarized this declaration of Don

11:39:21AM 16 Varney's?

11:39:22AM 17 A. Yes, there is.

11:39:23AM 18 Q. What time did you notarize it?

11:39:25AM 19 A. 11:00 a.m.

11:39:27AM 20 Q. And so based on the fact that your notary seal is on

11:39:30AM 21 the document and it was done at 11:00 a.m., what, if

11:39:35AM 22 anything, do you know about the lucidity of Mr. Varney on

11:39:38AM 23 that date?

11:39:39AM 24 A. Mr. Varney --

11:39:41AM 25 MR. CRAIG: Objection. That is an improper

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11:39:43AM 1 hypothetical, assumes facts, leading, foundation,  
11:39:46AM 2 speculation, argumentative, irrelevant, and unduly  
11:39:50AM 3 prejudicial.

11:39:52AM 4 MR. ADAMS: There is no hypothetical, your Honor.  
11:39:54AM 5 I asked him, based on the testimony he just gave that his  
11:39:57AM 6 notary symbol was on it and it is 11:00 a.m., what does he  
11:40:03AM 7 know from his pattern or practice whether Mr. Varney was  
11:40:05AM 8 lucid at that time.

11:40:07AM 9 MR. CRAIG: That also assumes the part that he  
11:40:09AM 10 made representations about what other people would say.

11:40:11AM 11 THE COURT: I'm sorry. Louder.

11:40:12AM 12 MR. CRAIG: It was also based on the  
11:40:14AM 13 representations that counsel had made to the witness about  
11:40:16AM 14 what other people would say.

11:40:24AM 15 THE COURT: I think this is a self-answering  
11:40:27AM 16 question. But the objection is sustained.

11:41:07AM 17 THE WITNESS: -- was lucid, otherwise the notary  
11:41:09AM 18 would not have occurred.

11:41:11AM 19 By Mr. Adams:

11:41:11AM 20 Q. Can you tell us whether or not Mr. Varney was lucid  
11:41:14AM 21 at 11:00 a.m. on February 7th, 2018 --

11:41:18AM 22 MS. JOHNSON: Your Honor --

11:41:19AM 23 MR. CRAIG: Same objections, your Honor.

11:41:20AM 24 THE COURT: Well, the objection is sustained.

11:41:27AM 25 THE WITNESS: I do not have a memory of

11:41:29AM 1 Mr. Varney. However, I --

11:41:39AM 2 MR. ADAMS: Your Honor, he answers about his  
11:41:40AM 3 pattern and practice and experience.

11:41:43AM 4 THE COURT: Yeah, he already testified to that.

11:41:46AM 5 MR. ADAMS: Okay. Understood.

11:42:03AM 6 CROSS-EXAMINATION

11:42:03AM 7 By Ms. Weglarz:

11:42:04AM 8 Q. Prior to notarizing Exhibit 2 in a hospital, had you  
11:42:09AM 9 ever notarized any documents in a hospital before?

11:42:11AM 10 A. Yes, I have.

11:42:12AM 11 Q. What kind of documents?

11:42:14AM 12 A. Power of attorneys, usually.

11:42:16AM 13 Q. Have you ever notarized a document like this type of  
11:42:20AM 14 declaration that talks about facts?

11:42:23AM 15 A. No, I have not. That was the first declaration I  
11:42:26AM 16 have ever done.

11:42:28AM 17 Q. Have you ever done a declaration like this since you  
11:42:34AM 18 notarized this declaration?

11:42:36AM 19 A. I would say no, I have not.

11:42:38AM 20 Q. So this type of declaration that you notarized, which  
11:42:41AM 21 is Exhibit 2, is the only time you have notarized a  
11:42:46AM 22 document like this; is that correct?

11:42:47AM 23 A. To the best of my memory.

11:42:49AM 24 Q. Do you recall when you were -- Well, actually, who  
11:42:57AM 25 asked you to notarize Exhibit 2?

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11:43:00AM 1 A. Mr. Adams.

11:43:01AM 2 Q. And when were you contacted by Mr. Adams to do the

11:43:10AM 3 notarial act?

11:43:11AM 4 A. The morning --

11:43:13AM 5 Q. What time did this notarial act take place?

11:43:18AM 6 A. At 11:00 a.m.

11:43:20AM 7 Q. And that is indicated in your book, correct?

11:43:22AM 8 A. Correct.

11:43:23AM 9 Q. How much earlier were you contacted by Mr. Adams?

11:43:28AM 10 A. Memory serves me, several hours prior.

11:43:33AM 11 Q. Have you spoken to Mr. Adams since February 7th?

11:43:37AM 12 A. Today, the first time since.

11:43:40AM 13 Q. When Mr. Adams asked you to do this notarial act,

11:43:54AM 14 what exactly did he -- did he tell you what he wanted you

11:43:56AM 15 to do on the phone?

11:43:57AM 16 A. Yes. He told me he wanted me to perform a notary.

11:44:00AM 17 Q. And there are different notarial acts, as I

11:44:04AM 18 understand it; is that right?

11:44:05AM 19 A. True.

11:44:05AM 20 Q. So it could be an acknowledgment or a jurat?

11:44:10AM 21 A. Correct.

11:44:10AM 22 Q. What other kinds of notarial acts are there?

11:44:15AM 23 A. Those are the two.

11:44:16AM 24 Q. What type of notarial act is this or was this?

11:44:20AM 25 A. This would be an acknowledgment.

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11:44:29AM 1 Q. Did anyone specifically tell you that the notarial  
11:44:33AM 2 act they wanted you to perform was an acknowledgment, or  
11:44:36AM 3 is that something you determined on your own?

11:44:38AM 4 A. I determined that.

11:44:39AM 5 Q. And as I understand what an acknowledgment is, it is  
11:44:48AM 6 basically you are verifying that the signature is genuine?

11:44:52AM 7 A. Correct.

11:44:53AM 8 Q. Does it verify anything other than that fact?

11:44:58AM 9 A. It does not.

11:45:00AM 10 Q. I am going to mark as Exhibit 4, just portions of the  
11:45:09AM 11 Arizona Notary Public Reference Manual. I will give you a  
11:45:15AM 12 copy. This one in particular is dated August 2018. Are  
11:45:19AM 13 you familiar with this particular publication?

11:45:21AM 14 A. I am not.

11:45:22AM 15 Q. Have you seen a publication similar to this that is  
11:45:30AM 16 dated prior to August 2018?

11:45:32AM 17 A. I believe I did, yes.

11:45:34AM 18 Q. And if you go to the second page, there is a  
11:45:43AM 19 checklist, twelve steps to a proper notarization. Are  
11:45:49AM 20 these in fact the steps that a notary is required to go  
11:45:54AM 21 through before a document is notarized? Take your time.  
11:46:03AM 22 There is no rush.

11:46:04AM 23 A. That's correct.

11:46:05AM 24 Q. Let me ask you a few questions about items on this  
11:46:08AM 25 checklist. The second step states, "Does a signer



11:46:14AM 1 comprehend the underlying transaction on the document?"

11:46:18AM 2 My question to you is, do you know if Mr. Varney in fact

11:46:25AM 3 comprehended the underlying transaction on the document?

11:46:29AM 4 A. As I don't have any memory of it, it is very

11:46:35AM 5 difficult for me to answer that question.

11:46:40AM 6 Q. So it would be fair to say -- if I asked you a

11:46:43AM 7 question like, "Did Mr. Varney read the document?" is that

11:46:47AM 8 a question that you wouldn't be able to answer because you

11:46:49AM 9 don't have a memory?

11:46:50AM 10 A. Correct.

11:46:51AM 11 Q. So let's just make it a little bit clean for the

11:47:00AM 12 record. Did Mr. Varney read the declaration that we have

11:47:06AM 13 identified as Exhibit 2 before he signed it?

11:47:09AM 14 A. I don't remember that.

11:47:11AM 15 Q. You mentioned that you felt that Mr. Varney was

11:47:18AM 16 lucid. And my question to you is, how did you determine

11:47:20AM 17 that Mr. Varney was in fact lucid?

11:47:24AM 18 A. I specifically didn't say that. I said that the

11:47:31AM 19 document would not have been notarized had he not been

11:47:35AM 20 lucid. Now, my practice is to engage in conversation and

11:47:44AM 21 to ask why we are present. That's my practice. And I

11:47:49AM 22 gauge from the response that I get the lucidity of the

11:47:53AM 23 person.

11:47:54AM 24 Q. Did you have a conversation with Mr. Varney?

11:47:56AM 25 A. I can't answer that question.

11:47:58AM 1 Q. You don't remember?

11:47:59AM 2 A. I do not remember.

11:48:00AM 3 Q. Do you remember who else was in the room when  
11:48:06AM 4 Mr. Varney signed the document?

11:48:08AM 5 A. I do not recall.

11:48:10AM 6 Q. Do you know who drafted this document?

11:48:14AM 7 A. I do not. I would assume that it was Mr. Adams, but  
11:48:19AM 8 I would not swear to that.

11:48:20AM 9 Q. Did you have any conversations with Mr. Adams about  
11:48:24AM 10 how this document was created?

11:48:26AM 11 A. I don't believe we did. We might have, but if we did  
11:48:31AM 12 I do not recall.

11:48:32AM 13 Q. Do you know when this document was created? I am  
11:48:37AM 14 referring to Exhibit 2.

11:48:38AM 15 A. I do not.

16

CROSS-EXAMINATION

11:48:39AM 17 By Mr. Harris:

11:48:39AM 18 Q. Were you paid to go to the hospital to notarize  
11:48:43AM 19 Mr. Varney's signature?

11:48:44AM 20 A. Absolutely.

11:48:46AM 21 Q. When you go to notarize a signature, how much are  
11:48:50AM 22 you -- what is your fee?

11:48:53AM 23 A. Wow. That is kind of a personal question. It  
11:49:01AM 24 depends on how much time I feel would be allocated to that  
11:49:09AM 25 session. Some are quick; they are cheaper. Some are more

lengthy; they are more expensive. Some have time considerations. Hospitals, the doctors tend to pop in and pop out. So the fee schedule is based on those scenarios.

Q. Is this a fee schedule that you set or is there a fee schedule set by the state of Arizona?

A. It is set by me. The state of Arizona only allows you to charge \$10 for the actual signing, the signature. The rest is determined by me, travel, time, things of that nature.

Q. When you were contacted by Mr. Adams to go to the hospital to sign, do you know what your quoted fee was for this signature?

A. I believe it was \$125, but I am only guessing. I did not check my records on that.

Q. When you -- were you paid eventually to go to the hospital to notarize the document we have marked as Exhibit 2?

A. Yes.

Q. Who paid you?

A. Ben did.

Q. Mr. Adams?

A. Yes. Sorry. Mr. Adams.

Q. That's okay. How did he pay you?

A. The only reason I remember Mr. Adams is because of the payment method. It was a bit peculiar, because to my

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11:50:36AM 1 memory he paid me with a \$100 bill, and I billed him \$25,  
11:50:42AM 2 which I recall receiving a check from his law firm for the  
11:50:47AM 3 other \$25. Had that not occurred, I probably would not  
11:50:52AM 4 have remembered Mr. Adams. Although, I will say that an  
11:50:55AM 5 attorney being present is odd. I kind of remember that  
11:50:59AM 6 part of it. For the most part, no, I wouldn't have  
11:51:01AM 7 remembered him.

11:51:02AM 8 Q. Have you had any conversations with anyone about  
11:51:04AM 9 additional compensation, other than those checks, for  
11:51:07AM 10 being here today?

11:51:08AM 11 A. No. Is that a possibility?

12 CROSS-EXAMINATION

11:51:13AM 13 By Ms. SERKO:

11:51:13AM 14 Q. One more thing you said was that you thought it was  
11:51:15AM 15 odd that attorneys were present at the time when you  
11:51:19AM 16 notarized what we have attached as Exhibit 2. What do you  
11:51:23AM 17 mean it is odd that attorneys were present when you do the  
11:51:28AM 18 notarial act?

11:51:29AM 19 A. Because of all the notaries I have done, I don't  
11:51:32AM 20 think I remember I had one where an attorney was present.

11:51:34AM 21 Q. So this is the only one where an attorney was  
11:51:36AM 22 present?

11:51:37AM 23 A. To the best of my knowledge, correct.

11:51:40AM 24 CROSS-EXAMINATION

11:51:40AM 25 By Mr. Carlton:

11:51:41AM 1 Q. My name is Mark Carlton. I only have a few  
11:51:45AM 2 questions. The first question I have for you is, you  
11:51:47AM 3 mentioned that you talked to Mr. Adams today, is that  
11:51:50AM 4 correct, before your deposition?

11:51:52AM 5 A. Correct.

11:51:54AM 6 Q. Was that in person or via phone?

11:51:56AM 7 A. Person.

11:51:58AM 8 Q. And what time did you start meeting with Mr. Adams  
11:52:02AM 9 this morning?

11:52:03AM 10 A. Five til -- What time is it?

11:52:11AM 11 MR. ADAMS: We started at 11:00.

11:52:17AM 12 THE WITNESS: Five til 11:00. Sorry.

11:52:18AM 13 By Mr. Carlton:

11:52:18AM 14 Q. Did you talk to him for about five minutes?

11:52:21AM 15 A. A little less. We took some time to walk up here, so  
11:52:25AM 16 a little less than five.

11:52:27AM 17 Q. Did you meet Mr. Adams outside the building  
11:52:29AM 18 somewhere?

11:52:29AM 19 A. I did.

11:52:30AM 20 Q. What did you talk about with Mr. Adams during your  
11:52:34AM 21 walk up to the deposition that you are sitting in now?

11:52:38AM 22 A. Well, Mr. Adams apologized to me for not contacting  
11:52:43AM 23 me, because I had not spoken to him during this whole  
11:52:47AM 24 process. And I received tons of phone calls. And I have  
11:52:54AM 25 been subpoenaed twice. And I just thought it was a bit

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1 odd that I had not heard from Mr. Adams. He apologized  
2 for not making contact. And he tried to calm me down,  
3 because I was a bit nervous. He told me that I wasn't in  
4 trouble. Basically that was the conversation.

5 Q. Did he tell you or suggest to you any of the  
6 questions that might be asked of you this morning?

7 A. He told me that my identity would be asked about and  
8 my credentials for the state of Arizona. He did tell me  
9 that, that those would be the type of questions that I  
10 would be getting.

11 Q. Did Mr. Adams use the word "lucid" at any time during  
12 your conversation?

13 A. He absolutely did not.

14 Q. What is your definition of the word "lucid"?

15 A. Self-awareness, awareness of one's surroundings,  
16 awareness of other people present, understanding --

17 Q. I'm sorry. You were breaking up there.

18 A. I'm sorry. I said self-awareness, understanding of  
19 one's surroundings, and understanding of who is present,  
20 an understanding of, I guess, the general purpose of why  
21 we are all together at that time.

22 Q. So you mentioned in response to questions earlier  
23 that you typically have a conversation with the witness  
24 prior to the signing. Is that the only what I will call  
25 test to determine whether or not the witness is lucid by

11:54:41AM 1 your definition?

11:54:42AM 2 A. Yes.

11:54:43AM 3 Q. Do you perform or are you trained to perform any kind  
11:54:47AM 4 of examination of the witness to determine whether they  
11:54:50AM 5 are lucid?

11:54:51AM 6 A. Not being a doctor, no, I wouldn't know what to do.  
11:55:01AM 7 I have no clue as to what to do, other than, as I stated,  
11:55:05AM 8 what my understanding of what lucidity is.

11:55:08AM 9 Q. I'm sorry. It sounds like we're breaking up again.

11:55:11AM 10 A. I said, as I am not a doctor, even though someone  
11:55:16AM 11 thought I was, I would have no idea as to what one would  
11:55:21AM 12 do to assess lucidity, clinically speaking. So I can only  
11:55:29AM 13 do so in a general sense, which is what I stated.

11:55:33AM 14 RECROSS-EXAMINATION

11:55:35AM 15 By Mr. Carlton:

11:55:36AM 16 Q. Mr. Parris, Mr. Carlton again. What I gathered from  
11:55:40AM 17 what I heard from your last answer was that -- your  
11:55:41AM 18 reference to being a doctor, was that because there was an  
11:55:44AM 19 error on one of the subpoenas you received?

11:55:47AM 20 A. Yes, that's correct.

11:55:48AM 21 Q. Just for the record, you are not a medical doctor; is  
11:55:52AM 22 that correct?

11:55:52AM 23 A. I am not.

11:55:55AM 24 Q. Do you have any type of medical training of any kind?

11:55:59AM 25 A. I do not.

11:56:00AM 1 Q. Have you ever worked in like a nursing facility where  
11:56:07AM 2 you would become familiar with elderly patients?

11:56:11AM 3 A. I have not.

11:56:12AM 4 Q. I will represent to you that Mrs. Varney was present  
11:56:23AM 5 at the time of the signing that you notarized for  
11:56:27AM 6 Mr. Varney. Is it fair to say you don't recall that?

11:56:29AM 7 A. I do not.

11:56:30AM 8 Q. I will also represent to you that she testified that  
11:56:34AM 9 Mr. Varney did not speak at all during this signing  
11:56:40AM 10 ceremony on February 7th. Okay?

11:56:44AM 11 A. Okay.

11:56:45AM 12 Q. Assuming that is true, what else in your practice do  
11:56:52AM 13 you do, if anything, to verify the lucidity of a witness?

11:56:58AM 14 A. I already stated what I do, what my practice is.

11:57:04AM 15 Q. So if the evidence turns out to be that Mr. Varney  
11:57:08AM 16 did not speak in your presence, would it be fair to say  
11:57:12AM 17 that you did not follow your practice in determining  
11:57:16AM 18 whether or not he was lucid?

11:57:17AM 19 A. Again, I don't have any memory of this event  
11:57:23AM 20 whatsoever, other than as I stated earlier about meeting  
11:57:27AM 21 Mr. Adams. So I do not remember.

11:57:31AM 22 Q. And so it sounds like you would defer to Maria  
11:57:36AM 23 Varney's recollection of the conversations or lack thereof  
11:57:40AM 24 over your own?

11:57:41AM 25 A. I would not defer anything when I don't have a memory



1 of the situation.

2 Q. Would you defer to somebody that does claim to have a  
3 memory?

4 A. I would not defer to anyone of a conversation or  
5 event that I don't have any memory of. I would not defer.

6 Q. Are you aware that there is a hearing on Monday  
7 before a federal judge regarding this particular  
8 declaration, Exhibit 2?

9 A. I am not.

10 Q. Is it fair to say then that you have not been asked  
11 to attend that hearing by Mr. Adams or anyone else?

12 A. That is correct.

13 Q. Is it your practice when attending a signing ceremony  
14 like this -- I know you mentioned it often involves car  
15 titles, not asbestos litigation. But do you as part of  
16 your conversation ask any questions about the contents of  
17 the documents that are being signed?

18 A. I do not.

19 Q. Is it your practice to ask anyone else, such as the  
20 person who arranges the signing session, about their  
21 understanding of the document?

22 A. It is not.

23 **RE CROSS-EXAMINATION**

24 **By Ms. Serko:**

25 Q. My first question is, do you recall when or what time

11:59:06AM 1 you arrived at the hospital on February 7th?

11:59:09AM 2 A. I would say approximately 10:30.

11:59:14AM 3 Q. So you said that he signed at around 11:00; is that  
11:59:20AM 4 correct?

11:59:20AM 5 A. That's correct.

11:59:21AM 6 Q. So between 10:30 and 11:00, what were you doing?

11:59:28AM 7 A. Waiting to get in to see Mr. Varney. I spent some  
11:59:35AM 8 time --

11:59:37AM 9 Q. Where were you waiting?

11:59:38AM 10 A. I spent most of the time looking for the room, and  
11:59:40AM 11 then I remember that Mr. Adams came out to meet me and  
11:59:46AM 12 took me to the room. He told me that it would be soon,  
11:59:52AM 13 and he went back into the room. That's my memory.

11:59:57AM 14 Q. Do you recall -- do you recall anything else that  
12:00:01PM 15 Mr. Adams said during that time?

12:00:02PM 16 A. No. I am embarrassed to say, but I don't have any  
12:00:09PM 17 memory of being in the room whatsoever. I am embarrassed  
12:00:12PM 18 to say that, but I don't.

12:00:15PM 19 Q. Do you recall whether or not Mr. Adams paid you  
12:00:18PM 20 before or after the signing?

12:00:21PM 21 A. It would have been after.

12:00:29PM 22 Q. Did Mr. Adams hand you the document that was  
12:00:33PM 23 notarized?

12:00:35PM 24 A. Yes, he did. I believe, yeah. He would have had to  
12:00:44PM 25 have given it to me for me to at least scan it to see if

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witnesses were required, which is what I am usually looking for.

Q. When are witnesses required?

A. When? Was that your question?

Q. Yes. Yes.

A. This is a declaration, okay, which I have never seen before. I don't even know what a declaration is. I usually do power of attorneys in hospitals, and they always require witnesses.

Q. From looking at the document, what did you determine about whether it required witnesses or not?

A. They were not required.

Q. This may have been asked, but do you recall whether or not there were witnesses or other people present in the room, other than yourself, Mr. Adams, and Mr. Varney?

A. No, I don't. I am being told today that there were other peoples in the room, but, again, I have no memory of this event whatsoever. So, as I said before, I couldn't defer to what someone else says, and I can't attest that there were other people in the room at the time, because I don't recall.

Q. Are you aware of the medications Mr. Varney was on at the time?

A. Excuse me?

Q. Are you aware of the medications Mr. Varney was on at

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12:02:24PM 1 the time?

12:02:24PM 2 A. No. I have no knowledge of medications whatsoever.

12:02:28PM 3 Q. Do you recall what hand he signed the document with?

12:02:33PM 4 A. I do not recall.

12:02:36PM 5 Q. Do you recall whether he was wearing glasses?

12:02:41PM 6 THE COURT: Cut it off.

12:02:44PM 7 MR. ADAMS: It's stopped.

12:02:45PM 8 THE COURT: It is noon. How much more time on  
12:02:49PM 9 this dep?

12:02:54PM 10 MR. ADAMS: Twelve minutes, your Honor.

12:02:56PM 11 THE COURT: Okay. We will pick it up at 1:30.

01:32:54PM 12 (Lunch recess.)

01:37:11PM 13 THE COURT: Let's continue with the deposition.

01:37:22PM 14 THE WITNESS: I do not recall.

01:37:27PM 15 By Ms. Serko:

01:37:28PM 16 Q. Sir, you mentioned in your prior testimony different  
01:37:34PM 17 types of notarization, an acknowledgment and oath or  
01:37:39PM 18 affirmation. Can you explain the difference between  
01:37:41PM 19 those?

01:37:42PM 20 A. An acknowledgment is verifying the identity of the  
01:37:46PM 21 person. What was the other two, again, that you said?

01:37:55PM 22 Q. Oath or affirmation.

01:37:58PM 23 A. An oath is where you would give -- ask for a sworn  
01:38:03PM 24 statement, ask for it in the affirmative. And the other  
01:38:11PM 25 one was affirmation? Is that what you said?

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01:38:16PM 1 Q. That's my understanding, oath or affirmation.

01:38:20PM 2 A. I don't know what that one is.

01:38:23PM 3 Q. And in this instance you qualified this signing of  
01:38:27PM 4 Mr. Varney as an acknowledgment, correct?

01:38:30PM 5 A. Correct.

01:38:30PM 6 Q. Do you recall actually seeing Mr. Varney's  
01:38:38PM 7 identification?

01:38:38PM 8 A. Yes. Well, no, I don't recall that I -- seeing it,  
01:38:45PM 9 but because it is recorded in my book, I saw it. Because  
01:38:50PM 10 everything in my book occurs -- as far as identification  
01:38:53PM 11 is concerned, is transferred from the driver's license.

01:38:59PM 12 Q. But you have no independent memory of seeing his  
01:39:03PM 13 driver's license?

01:39:04PM 14 A. I do not.

01:39:05PM 15 Q. Do you recall who gave you his driver's license, if  
01:39:12PM 16 that's what occurred?

01:39:13PM 17 A. I do not.

01:39:17PM 18 Q. You wouldn't have seen a computer printer in the  
01:39:26PM 19 room; is that correct?

01:39:26PM 20 A. I'm sorry? Would you say that again?

01:39:30PM 21 Q. Sure. You did not see a computer printer in the room  
01:39:33PM 22 with Mr. Varney; is that correct?

01:39:35PM 23 A. No. Again, I can't state as to what happened in the  
01:39:41PM 24 room or what equipment was in the room or what peoples  
01:39:45PM 25 were in the room, because I don't have any memory of it.

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01:39:49PM 1 I would say it's odd to see a computer printer in a  
01:39:53PM 2 hospital room, but I don't recall if there was one,  
01:39:55PM 3 because I don't remember.

01:39:56PM 4 Q. Sir, you said that you met with Mr. Adams this  
01:40:02PM 5 morning, correct?

01:40:04PM 6 A. Correct.

01:40:04PM 7 Q. And you mentioned that he made a comment along the  
01:40:12PM 8 lines of, "You're not in trouble." Do you know why he  
01:40:15PM 9 said that?

01:40:15PM 10 A. Because I think it was obvious that I was nervous and  
01:40:23PM 11 apprehensive about this scenario, because I had received  
01:40:29PM 12 so many phone calls from so many different attorneys  
01:40:34PM 13 asking me so many questions about an event that I don't  
01:40:39PM 14 recall. Because I do so many notaries, I can't possibly  
01:40:46PM 15 recall all of them. It's not possible.

01:40:51PM 16 And then I would also say that this happened more  
01:40:54PM 17 than a year ago. Okay? Perhaps if it was two months ago  
01:41:00PM 18 I would have a better memory, but it was a long time ago.  
01:41:04PM 19 So I don't have any memory of it.

01:41:07PM 20 Q. And how was it that you and Mr. Adams arranged to  
01:41:12PM 21 meet prior to the deposition today? Was it a phone call?

01:41:14PM 22 A. We did not arrange anything. I drove here, and he  
01:41:22PM 23 called me, and he came down and met me. It was  
01:41:30PM 24 coincidence because I had just --

01:41:33PM 25 Q. Had you --

01:41:34PM 1 A. -- I had just parked. I had just put the car in park  
01:41:37PM 2 and the phone rang.

01:41:39PM 3 Q. And that phone call from Mr. Adams today, just as you  
01:41:44PM 4 parked, that was the first time you had spoken to him  
01:41:46PM 5 since February 7th?

01:41:48PM 6 A. That is correct.

01:41:49PM 7 Q. And was anything discussed on the phone, other than  
01:41:53PM 8 that you had just arrived and would meet downstairs,  
01:41:58PM 9 apparently?

01:41:58PM 10 A. Other than his apologies for not reaching out to me  
01:42:03PM 11 sooner. That was it.

01:42:06PM 12 Q. Okay. Sir, just in general, are there other signers  
01:42:17PM 13 or notarizations you have done that you do have memory of,  
01:42:21PM 14 or do you generally not recall instances of notarizing  
01:42:25PM 15 documents?

01:42:26PM 16 A. To be honest with you, I try to forget as quickly as  
01:42:31PM 17 I do it. I do way too many notaries to try to retain in  
01:42:37PM 18 my mind those events. I do way too many.

19 REDIRECT EXAMINATION

20 By Mr. Adams:

01:42:43PM 21 Q. Mr. Parris, I have a few follow-up questions for you  
01:42:47PM 22 quickly, and then, hopefully, we will get you out of here.  
01:42:50PM 23 You were asked some questions about myself, Mr. Adams,  
01:42:53PM 24 paying you \$100 in cash at the hospital, and then I think  
01:42:58PM 25 my law firm sending you a \$25 check after that. Do you

01:43:02PM 1 recall that testimony?

01:43:02PM 2 A. I do.

01:43:03PM 3 Q. Did I pay you anything more than what you have billed  
01:43:12PM 4 for the work?

01:43:13PM 5 A. You did not.

01:43:14PM 6 Q. Did I bribe you in any way?

01:43:16PM 7 A. You did not.

01:43:17PM 8 Q. Did I say, "If I give you a bunch of money, will you  
01:43:21PM 9 to sign this document, even though Mr. Varney is not  
01:43:26PM 10 lucid"?

01:43:30PM 11 MS. JOHNSON: Objection. It's argumentative and  
01:43:32PM 12 it's leading. It is an improper question.

01:43:33PM 13 THE COURT: I'm sorry. Is somebody talking?

01:43:35PM 14 MS. JOHNSON: I said objection, it's leading and  
01:43:38PM 15 argumentative.

01:43:41PM 16 MR. ADAMS: There was no objection at the  
01:43:43PM 17 deposition, your Honor, just for the record.

01:43:46PM 18 THE COURT: It is a harmless leading question.  
01:43:49PM 19 Overruled.

01:43:52PM 20 THE WITNESS: I did not, I would not.

01:43:56PM 21 By Mr. Adams:

01:43:57PM 22 Q. Yeah. If I had done that, if a lawyer came to you  
01:43:59PM 23 and tried to bribe you, would you accept it?

01:44:02PM 24 A. I would not accept it.

01:44:03PM 25 Q. You have been paid by other lawyers to be here today,

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01:44:05PM 1  
01:44:06PM 2  
01:44:08PM 3  
01:44:11PM 4  
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01:44:16PM 6  
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01:44:19PM 8  
01:44:23PM 9  
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01:44:51PM 20  
01:44:54PM 21  
01:44:54PM 22  
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01:44:59PM 24  
01:45:04PM 25

correct?

A. Yes, I believe I have been.

Q. You mentioned that you had received, I think, a \$43 check and 45 cents, and a \$56 check, correct?

A. Correct.

Q. Those came from lawyers that were not me, correct?

A. Correct.

Q. Have you changed your testimony today because other lawyers wrote you checks?

A. I have not.

Q. Have you said anything untrue today because other lawyers wrote you checks?

A. I have not.

Q. Would you do that?

A. I resent the statement, because there is no reason for me to do anything like that, you know. We are talking minuscule amounts of money here. If we were talking billions of dollars, millions of dollars, I might consider it. I wouldn't do it, but I might consider it. For the amount of money we are talking about, it is not worth it to me.

Q. How many times have you notarized documents, if you had to estimate, since you became a notary?

A. How many have I notarized since I became a notary?

Q. Yeah.

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01:45:05PM 1 A. Five hundred and seventy-seven, I believe it has  
01:45:08PM 2 been.  
01:45:08PM 3 Q. You have made a lot more than \$100, right?  
01:45:10PM 4 A. I have.  
01:45:11PM 5 Q. Would you risk your entire notary license for \$100?  
01:45:14PM 6 A. No.  
01:45:15PM 7 Q. You were asked some other questions about the fact  
01:45:19PM 8 that there was an attorney present when you notarized  
01:45:22PM 9 Mr. Varney's declaration. Do you remember that?  
01:45:24PM 10 A. Right.  
01:45:24PM 11 Q. That was me?  
01:45:25PM 12 A. I'm pretty sure.  
01:45:28PM 13 Q. Did I use any lawyer tricks on you to get you sign  
01:45:34PM 14 the document?  
01:45:36PM 15 A. Whoa. No, you did not.  
01:45:40PM 16 Q. Did I twist your arm, or try to convince you, or do  
01:45:45PM 17 any lawyer-like things to try to get you to do something  
01:45:48PM 18 that you didn't believe was true and accurate?  
01:45:53PM 19 A. You did not.  
01:45:55PM 20 Q. You were asked some questions about what your pattern  
01:46:01PM 21 and practice is with respect to engaging in conversation  
01:46:07PM 22 with individuals when they are going to sign something  
01:46:10PM 23 that you are notarizing.  
01:46:12PM 24 A. Correct.  
01:46:12PM 25 Q. Can you tell us whether or not that is something that

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01:46:21PM 1 you do every single time you notarize a document?

01:46:24PM 2 A. I do not.

01:46:25PM 3 Q. Can you tell us whether you at least determine that  
01:46:32PM 4 someone is lucid and with it every time they (sic)  
01:46:35PM 5 notarize a document?

01:46:36PM 6 A. Absolutely.

01:46:37PM 7 Q. Do you need to be a licensed medical doctor to do  
01:46:40PM 8 that?

01:46:41PM 9 A. I do not.

01:46:43PM 10 Q. You were asked some questions about the specific type  
01:46:47PM 11 of declaration document that you notarized in this case.  
01:46:51PM 12 Do you remember that?

01:46:51PM 13 A. I do.

01:46:51PM 14 Q. And I think your testimony was you hadn't seen a  
01:46:57PM 15 declaration before that you notarized?

01:47:00PM 16 A. Correct.

01:47:00PM 17 Q. Have you gone to hospitals before to notarize  
01:47:04PM 18 documents?

01:47:05PM 19 A. I have.

01:47:05PM 20 Q. How common is that?

01:47:07PM 21 A. Very.

01:47:07PM 22 Q. Is there anything unusual about you going to a  
01:47:12PM 23 hospital and notarizing a document?

01:47:14PM 24 A. Absolutely not.

01:47:15PM 25 Q. You were asked some questions about a twelve-step

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01:47:20PM 1 Arizona notary public reference manual. Do you recall  
01:47:23PM 2 that?

01:47:24PM 3 A. I do.

01:47:24PM 4 Q. We have marked that document as Exhibit 4 to the  
01:47:27PM 5 deposition, and it has twelve steps that a notary  
01:47:31PM 6 generally follows when getting a document notarized?

01:47:33PM 7 A. Correct.

01:47:34PM 8 Q. Is it your pattern and practice to follow those  
01:47:37PM 9 twelve steps?

01:47:38PM 10 A. Absolutely.

01:47:38PM 11 Q. Can you tell us whether or not it is your pattern and  
01:47:41PM 12 practice to have an individual read a document and  
01:47:50PM 13 comprehend a document before signing it and placing your  
01:47:54PM 14 notary seal on the document?

01:47:55PM 15 MS. JOHNSON: Objection.

01:47:57PM 16 THE WITNESS: That has never happened. It is not  
01:47:59PM 17 common.

01:47:59PM 18 By Mr. Adams:

01:47:59PM 19 Q. I'm sorry. Say that again.

01:48:00PM 20 A. I said the signer reading the document has never  
01:48:07PM 21 occurred ever in my signings, at the event. They scan it  
01:48:14PM 22 and they sign it.

01:48:16PM 23 Q. You were asked some questions by a number of lawyers  
01:48:19PM 24 in the room and on the phone. Have any of those questions  
01:48:22PM 25 changed your testimony, that you would not have notarized

01:48:26PM 1 this document if Mr. Varney was unable to respond in any  
01:48:33PM 2 way?

01:48:33PM 3 A. That is correct, nothing would have changed or will  
01:48:37PM 4 change.

5 CROSS-EXAMINATION

6 By Ms. Weglarz:

01:48:39PM 7 Q. Is it a requirement that the person actually read a  
01:48:41PM 8 document before you acknowledge the signature as in you  
01:48:48PM 9 did --

01:48:49PM 10 A. In my presence?

01:48:50PM 11 Q. -- with a notarial act? Yes.

01:48:51PM 12 A. Absolutely not.

01:48:52PM 13 Q. Before you, as a notary public, are allowed to  
01:48:56PM 14 acknowledge a signature on a document, like you did here,  
01:48:59PM 15 is it a requirement --

01:49:01PM 16 A. It is not.

01:49:01PM 17 Q. -- that the person have read the document?

01:49:03PM 18 A. It is not.

19 FURTHER RECROSS-EXAMINATION

20 By Mr. Harris:

01:49:06PM 21 Q. I believe you testified a moment ago in response to  
01:49:09PM 22 Mr. Adams that you do not always talk to a witness to  
01:49:12PM 23 confirm whether they are lucid. Did I understand that  
01:49:15PM 24 correctly?

01:49:18PM 25 A. There is always brief conversations, not lengthy,

01:49:27PM 1 "hi," things of that nature.

01:49:33PM 2 Q. When you referred earlier to conversations, do you  
01:49:37PM 3 consider one word, such as "hi," to constitute a  
01:49:42PM 4 conversation?

01:49:43PM 5 A. If I get a response, yes.

01:49:48PM 6 Q. That's all you are looking for, is a response?

01:49:50PM 7 A. I didn't say that.

01:49:55PM 8 Q. What else are you looking for then, beyond just a  
01:49:58PM 9 simple response, like "hi"?

01:50:01PM 10 A. Lucidity, awareness.

01:50:08PM 11 **FURTHER RECROSS-EXAMINATION**

01:50:08PM 12 **By Ms. Weglarz:**

01:50:10PM 13 Q. Mr. Parris, did Mr. Adams on February 7th tell you  
01:50:14PM 14 Mr. Varney was dying?

01:50:15PM 15 A. He did not.

01:50:17PM 16 Q. Did you have any other information as to what his  
01:50:21PM 17 condition was or prognosis?

01:50:24PM 18 A. I did not.

01:50:29PM 19 **MS. WEGLARZ:** Thank you.

01:50:32PM 20 **MR. ADAMS:** Anyone else on the phone? All right.  
01:50:35PM 21 I don't have any more questions. Your deposition is  
01:50:37PM 22 complete. Thank you very much, sir.

01:50:39PM 23 **THE WITNESS:** Are we off the record?

01:50:42PM 24 **MR. ADAMS:** That completes the deposition of  
01:50:44PM 25 Mr. Parris, your Honor.

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01:50:44PM 1 THE COURT: I'm sorry. Let me ask a couple of  
01:50:47PM 2 questions. I didn't get his last name.

01:50:52PM 3 MR. ADAMS: Parris, P, as in Peter, A-R-R-I-S.  
01:50:59PM 4 It's like Paris, France, but with an extra R.

01:51:05PM 5 THE COURT: Speaking of Paris, I don't know if  
01:51:08PM 6 you heard about it, but the Notre Dame cathedral is on  
01:51:13PM 7 fire, and apparently pretty bad.

01:51:17PM 8 There was one other thing: He testified as to when  
01:51:21PM 9 he got his certificate, and I didn't make a note of it.

01:51:24PM 10 MR. ADAMS: It was September of 2017.

01:51:30PM 11 THE COURT: Okay. Now, there were a lot of  
01:51:43PM 12 objections before we started. I think they got resolved.  
01:51:52PM 13 Are there any objections to Mr. Parris' deposition that  
01:51:56PM 14 didn't get resolved that should be resolved?

01:52:05PM 15 There were a lot of leading questions in there. I  
01:52:09PM 16 guess you probably know I have been at this a little  
01:52:18PM 17 while. The kind of leading questions that you objected to  
01:52:22PM 18 at the last, trying to bolster the witness' testimony,  
01:52:29PM 19 don't help much, what the questioner thinks he's doing.

01:52:36PM 20 Anyway, who's your next witness?

01:52:39PM 21 MR. ADAMS: Your Honor, we have spent the lunch  
01:52:41PM 22 hour withdrawing about eight pages of Dr. Sharma's  
01:52:46PM 23 testimony. We would like to read that at this time. And  
01:52:53PM 24 Mr. Horn will be Dr. Sharma on the stand, and I will  
01:52:57PM 25 question the witness. I think that will go much faster

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01:52:59PM 1 than the video dep, where we are kind of shuffling through  
01:53:04PM 2 papers and trying to --

01:53:04PM 3 THE COURT: It would be faster if I read it  
01:53:07PM 4 myself on my own time.

01:53:09PM 5 MR. ADAMS: That is another option.

01:53:11PM 6 MR. VEGA: Your Honor, if I may, there really  
01:53:13PM 7 seems to be a lack of communication between plaintiff and  
01:53:16PM 8 the defendants, because this is the first time I am  
01:53:18PM 9 hearing that they did any redactions. We had an hour and  
01:53:23PM 10 a half. At any point in time they could have come to us  
01:53:25PM 11 to tell us what those redactions were so that we can  
01:53:29PM 12 communicate.

01:53:29PM 13 THE COURT: We are talking due process. They are  
01:53:32PM 14 entitled to know what you are going to offer.

01:53:34PM 15 MR. ADAMS: Your Honor, if I had touched a single  
01:53:37PM 16 designation they had made, or had co-designated in, or  
01:53:42PM 17 have done anything to -- but object to and try to exclude,  
01:53:45PM 18 I certainly would have brought it up. I am not trying  
01:53:48PM 19 to -- I only withdrew our designations. I wouldn't touch  
01:53:52PM 20 theirs, and I would never do that. I am trying to  
01:53:54PM 21 streamline things.

01:53:55PM 22 THE COURT: Streamlining is great, but they have  
01:53:57PM 23 a right to know what you are going to offer.

01:54:01PM 24 MR. VEGA: That still doesn't address whether  
01:54:03PM 25 they streamlined the things that we found objectionable or

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01:54:06PM 1 not, or if those are still part of the record. That's the  
01:54:09PM 2 lack of communication that we are having at this point.

01:54:14PM 3 MR. ADAMS: We withdrew our own designations that  
01:54:16PM 4 they objected to and wanted excluded.

01:54:21PM 5 MR. VEGA: Did you withdraw it --

01:54:22PM 6 MR. ADAMS: Excuse me, counsel. Don't address  
01:54:25PM 7 me. We withdrew our own designations that they objected  
01:54:28PM 8 to and wanted excluded. We can put them back and they can  
01:54:31PM 9 object. Your Honor, I am over here trying to get this in  
01:54:34PM 10 the quickest, easiest way possible. That's all I am  
01:54:36PM 11 trying to do.

01:54:38PM 12 MR. VEGA: Your Honor, that misses the point.

01:54:40PM 13 THE COURT: I understand. What I am telling you  
01:54:42PM 14 is that due process requires that they understand, or  
01:54:45PM 15 know, or have a chance to object to what you're going to  
01:54:48PM 16 offer. Provide that to them in some form somehow. This  
01:54:55PM 17 is still here, incidentally, that you handed up earlier.

01:55:01PM 18 MR. ADAMS: Okay. We cannot -- Okay. Do you  
01:55:09PM 19 want us to -- Your Honor, does the Court want to read the  
01:55:14PM 20 transcript on its own time, and we won't --

01:55:17PM 21 THE COURT: That is the fastest way. I can do  
01:55:20PM 22 that tonight while I'm enjoying my time off at home.  
01:55:29PM 23 That's the easiest way to do it, the fastest way.

01:55:35PM 24 MR. ADAMS: All right.

01:55:44PM 25 MR. VEGA: Your Honor, will we still have an

01:55:46PM 1 opportunity to see what plaintiffs' counsel is  
01:55:49PM 2 proposing --

01:55:50PM 3 THE COURT: That's what I just told them.

01:55:54PM 4 MR. ADAMS: We will skip the withdrawals. They  
01:55:56PM 5 have seen it.

01:55:57PM 6 THE COURT: Pardon?

01:55:58PM 7 MR. ADAMS: We won't withdraw anything. We will  
01:56:00PM 8 keep it as it is, if that's easier.

01:56:03PM 9 THE COURT: I don't know what you're talking  
01:56:05PM 10 about now. You're going to offer Dr. Sharma's deposition?

01:56:14PM 11 MR. ADAMS: Right.

01:56:14PM 12 THE COURT: What I'm telling you is they have a  
01:56:17PM 13 right to know what you're going to offer before you submit  
01:56:19PM 14 it. Make arrangements to give them that information.

01:56:26PM 15 MR. ADAMS: Okay. No problem.

01:56:28PM 16 MR. CRAIG: Your Honor, I do have concern that  
01:56:32PM 17 the -- what they're going to hand you does not include the  
01:56:35PM 18 objections that we noted in the transcript and provided to  
01:56:40PM 19 them.

01:56:45PM 20 THE COURT: I could have read the whole thing by  
01:56:47PM 21 now and been done.

01:56:50PM 22 MR. CRAIG: Normally Rule 32 has a procedure that  
01:56:55PM 23 accomplishes all this, that wasn't done here.

01:57:00PM 24 THE COURT: I am trying to get to the bottom line  
01:57:05PM 25 efficiently here, and hassling over this stuff delays it.

01:57:13PM 1 If you know what they are going to offer, then you can  
01:57:16PM 2 object before it is submitted. That's the next step in  
01:57:22PM 3 Dr. Sharma's deposition.

01:57:27PM 4 All right. What's next?

01:57:30PM 5 MR. ADAMS: We would like to publish the  
01:57:35PM 6 declaration of Father Eric Schimmel and read it into the  
01:57:40PM 7 record.

01:57:40PM 8 THE COURT: All right. I would point out that  
01:57:47PM 9 the declaration is not available for trial, so this would  
01:57:50PM 10 be a subject of the motion on summary judgment only.

01:57:54PM 11 MR. ADAMS: All right. Plaintiffs call as their  
01:57:58PM 12 next witness Father Eric Schimmel.

01:58:09PM 13 MS. WEGLARZ: Your Honor, the defendants as a  
01:58:10PM 14 whole object to this declaration on the basis of hearsay,  
01:58:15PM 15 for which there is no exception, and therefore it is  
01:58:15PM 16 inadmissible.

01:58:16PM 17 THE COURT: I am having a hard time understanding  
01:58:18PM 18 you. Be seated, and you can pull that over, hopefully,  
01:58:22PM 19 and you won't have to break your back.

01:58:25PM 20 MS. WEGLARZ: The defendants object to Father  
01:58:31PM 21 Schimmel's declaration on the basis of hearsay, for which  
01:58:33PM 22 there is no exception, and therefore it is inadmissible.

01:58:37PM 23 THE COURT: It may be admissible for summary  
01:58:41PM 24 judgment purposes. Let's see what he has to say, if  
01:58:46PM 25 that's all we have is his declaration.

01:59:03PM 1 MR. ADAMS: The declaration of Father Eric  
01:59:06PM 2 Schimmel, CSC. "I, Father Eric Schimmel, CSC, declare as  
01:59:13PM 3 follows: I am not a named party to this action. Nor have  
01:59:15PM 4 I been offered any reward, payment, promise, or inducement  
01:59:19PM 5 for the execution of this declaration. I have not been  
01:59:22PM 6 threatened or pressured in any way to provide the  
01:59:24PM 7 information in this declaration, which I do so knowingly  
01:59:27PM 8 and voluntarily. I have personal knowledge of the facts  
01:59:31PM 9 in this declaration from my own personal observation and  
01:59:33PM 10 experience. I could competently testify to them, if asked  
01:59:38PM 11 to.

01:59:38PM 12 I am an ordained Catholic priest of the Congregation  
01:59:44PM 13 of Holy Cross. At the time I met Mr. Varney, I was  
01:59:47PM 14 working at the parochial vicar at Saint John Vianney Roman  
01:59:52PM 15 Catholic Parish in Goodyear, Arizona. That is in the  
01:59:56PM 16 diocese of Phoenix.

01:59:57PM 17 Before joining the Saint John Vianney Parish, I  
02:00:00PM 18 worked in Hispanic outreach at King's College in  
02:00:05PM 19 Wilkes-Barre, Pennsylvania for three years. Before that I  
02:00:08PM 20 was the director of Andre House of Hospitality, a ministry  
02:00:13PM 21 to the homeless and poor populations of Phoenix, Arizona,  
02:00:16PM 22 providing dinner service, hospitality services,  
02:00:20PM 23 transitional housing, and prayer. At the time of the  
02:00:23PM 24 incident below, I lived in Goodyear, Arizona.

02:00:26PM 25 On February 6th, 2018, Maria Gloria Varney contacted

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02:00:32PM 1 Saint John Vianney and requested that a priest come to  
02:00:36PM 2 administer the last rites and holy communion to her  
02:00:40PM 3 husband, Donald Varney, whose death from mesothelioma was  
02:00:52PM 4 imminent.

02:00:53PM 5 That same evening, I traveled to Abrazo West Hospital  
02:00:56PM 6 in Goodyear, Arizona. I met with Don Varney, who was very  
02:01:01PM 7 ill and in tremendous pain. Don was very emaciated,  
02:01:04PM 8 struggled to breathe, and appeared close to death.

02:01:07PM 9 I gave Mr. Varney the sacrament of anointing of the  
02:01:12PM 10 sick with the special prayers for the last rites. The  
02:01:15PM 11 last rites in Roman Catholicism are the last prayers and  
02:01:20PM 12 ministrations given to an individual of the faith shortly  
02:01:23PM 13 before death.

02:01:24PM 14 I had also anticipated witnessing Mr. Varney sign a  
02:01:27PM 15 declaration that evening. As he was not in a position to  
02:01:31PM 16 sign, being well after 7:00 p.m., and the people who would  
02:01:35PM 17 be needed to witness the signing of the document were not  
02:01:37PM 18 there, I was asked to come back the next day, during the  
02:01:40PM 19 day.

02:01:40PM 20 On February 7th, 2018, I again went to Mr. Varney's  
02:01:47PM 21 room at Abrazo West Hospital to witness Mr. Varney sign a  
02:01:50PM 22 document. I returned to Abrazo West Hospital and was  
02:01:54PM 23 present when Mr. Varney signed the document, which I  
02:01:57PM 24 believe is attached as Exhibit A. Mr. Varney was handed  
02:02:01PM 25 the attached document and a pen. Although he was very

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02:02:05PM 1 sick, I was impressed that he sat up to sign the document,  
02:02:08PM 2 rather than stay lying in the bed and make a scribble  
02:02:12PM 3 signature lying down that I have seen other patients make  
02:02:15PM 4 when in hospital. He opened his eyes, held the document,  
02:02:19PM 5 responded positively that he knew" --

6 MR. CRAIG: Objection.

02:02:21PM 7 MR. ADAMS: -- "what he was signing."

02:02:23PM 8 MR. CRAIG: Objection. This is speculation.  
02:02:26PM 9 Lacks foundation.

02:02:27PM 10 THE COURT: Pardon?

02:02:28PM 11 MR. CRAIG: I am objecting because this is  
02:02:30PM 12 speculation and lacks foundation.

02:02:32PM 13 THE COURT: Overruled.

02:02:34PM 14 MR. CRAIG: This portion of it.

02:02:36PM 15 MR. ADAMS: "He opened his eyes, held the  
02:02:38PM 16 document, responded positively that he knew what he was  
02:02:40PM 17 signing, and signed it. He appeared to understand the  
02:02:43PM 18 document. After signing the document Mr. Varney laid back  
02:02:48PM 19 down in bed and closed his eyes.

02:02:50PM 20 There were several individuals in the room who  
02:02:52PM 21 witnessed Mr. Varney sign the document, including a  
02:02:55PM 22 notary, Gloria Varney, Mr. Varney's daughter, and  
02:02:59PM 23 Mr. Varney's lawyer.

02:03:00PM 24 I understand that Mr. Varney passed away the  
02:03:03PM 25 following day, February 8th, 2018.

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02:03:05PM 1 In the middle of March 2019 I was thereafter  
02:03:12PM 2 contacted" --

02:03:13PM 3 MR. CRAIG: Objection, your Honor. The rest of  
02:03:15PM 4 the declaration is not relevant and highly prejudicial.

02:03:27PM 5 MR. ADAMS: Your Honor, if I can be heard? I  
02:03:29PM 6 will give you a chance to read it. Sorry.

02:03:31PM 7 THE COURT: Pardon me?

02:03:34PM 8 MR. ADAMS: I didn't want to interrupt if the  
02:03:36PM 9 Court was reading the last paragraph.

02:03:39PM 10 THE COURT: Yeah. The objection is overruled. I  
02:03:44PM 11 understand the objection. It goes to the weight to be  
02:03:47PM 12 attached to this. You can go ahead.

02:03:49PM 13 MR. ADAMS: "In the middle of March 2019 I was  
02:03:54PM 14 thereafter contacted by someone from a law firm who asked  
02:03:56PM 15 me a large number of questions. The person initially  
02:03:59PM 16 presented himself as seeking testimony about what I  
02:04:02PM 17 remembered about the incident above.

02:04:04PM 18 As the conversation drew on, I was hesitant to say  
02:04:08PM 19 more than what I confidently remembered. The questions  
02:04:11PM 20 started to become more pointed, and I felt like they were  
02:04:14PM 21 digging for information beyond what I could comfortably  
02:04:17PM 22 testify to under oath. The nature of the questions made  
02:04:20PM 23 it appear to me that this person was searching for ways to  
02:04:23PM 24 discredit Mr. Varney.

02:04:26PM 25 I became frustrated by the prolonged questioning.

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02:04:31PM 1 Some of the questions seeming to fish for information. I  
02:04:38PM 2 asked who he represented, and the person said he  
02:04:40PM 3 represented the firm Mr. Varney's family was suing, or  
02:04:43PM 4 something along those lines. I said that I did not know  
02:04:46PM 5 he represented a specific side in the case and that  
02:04:49PM 6 information would have been good to know. I felt it would  
02:04:53PM 7 have given me context to know why the questions could  
02:04:55PM 8 start with something along the lines of, 'Wait, how about  
02:04:59PM 9 this? Do you recall?' rather than just let my initial  
02:05:05PM 10 testimony stand for itself.

02:05:06PM 11 He said that he had identified himself at the outset  
02:05:08PM 12 of the conversation and always does so. I said that I had  
02:05:11PM 13 already testified to all that I remember and spent longer  
02:05:14PM 14 on the phone than I had time for and ended the  
02:05:18PM 15 conversation.

02:05:18PM 16 I was disturbed that the person questioned in ways  
02:05:22PM 17 that seemed to be looking for the smallest possible way to  
02:05:24PM 18 discredit someone, even while I was persistent in my  
02:05:28PM 19 answers to only testify to as much as I could confidently  
02:05:31PM 20 remember.

02:05:31PM 21 I had a voicemail from this person who called,  
02:05:34PM 22 leading me to call back. I have recorded that voicemail.  
02:05:38PM 23 It, the voicemail, does identify the person by name and  
02:05:41PM 24 firm, but no reference was ever made about who he  
02:05:43PM 25 represents.

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02:05:45PM 1 My reaction to the way the person presented himself  
02:05:47PM 2 was that it felt disingenuous to claim to always clearly  
02:05:52PM 3 identify oneself while only identifying a law firm, as if  
02:05:55PM 4 I was expected to remember who represented Mr. Varney, who  
02:05:59PM 5 had passed over a year ago.

02:06:00PM 6 When I stated that I was not aware when Mr. Varney  
02:06:03PM 7 passed, he stated in a very matter of fact tone that it  
02:06:07PM 8 was the day after he signed the document, with no apparent  
02:06:10PM 9 concern for Mr. Varney's demise, nor for the family.

02:06:14PM 10 I declare under the penalty of perjury under the laws  
02:06:17PM 11 of the states of Arizona and Washington that the foregoing  
02:06:21PM 12 is true and correct." Dated this 4th day of April 2019,  
02:06:25PM 13 at Holly Cross Parish, eastern Massachusetts, Father Eric  
02:06:32PM 14 Schimmel, CSC.

02:06:34PM 15 And, your Honor, for the record, Exhibit A to this  
02:06:37PM 16 declaration from Father Schimmel is the declaration of  
02:06:41PM 17 Donald Varney.

02:06:50PM 18 THE COURT: Well, that last paragraph is a good  
02:06:52PM 19 reminder to lawyers how to investigate things fairly.

02:06:57PM 20 All right. Next witness.

02:06:59PM 21 MR. ADAMS: Your Honor, plaintiffs call as their  
02:07:01PM 22 next witness Dawn Brown.

02:07:12PM 23 THE COURT: Ms. Brown, if you would raise your  
02:07:15PM 24 right hand to be sworn.

02:07:17PM 25 DAWN BROWN,

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02:07:23PM 1           having been sworn under oath, testified as follows:

02:07:23PM 2                   THE COURT:   Be seated.

02:07:24PM 3                               DIRECT EXAMINATION

02:07:27PM 4       By Mr. Adams:

02:07:35PM 5       Q.    Good morning, Ms. Brown.

02:07:36PM 6       A.    Good morning.

02:07:37PM 7       Q.    How did you know Don Varney?

02:07:41PM 8       A.    He is my father.

02:07:44PM 9       Q.    Have you had your deposition taken in this case?

02:07:47PM 10      A.    I'm sorry?   Say that one more time.

02:07:50PM 11      Q.    Have you ever done anything like this in your life?

02:07:54PM 12      A.    No.

02:07:55PM 13      Q.    Were you present when your father, Don Varney,  
02:08:00PM 14      passed?

02:08:00PM 15      A.    I was.

02:08:00PM 16      Q.    And were you present on February 7th, 2018, when he  
02:08:05PM 17      signed a document?

02:08:06PM 18      A.    Yes, I was.

02:08:06PM 19      Q.    I want to ask you a few questions about that, just a  
02:08:12PM 20      couple of questions about your background, so we know who  
02:08:14PM 21      you are.   How old are you?

02:08:15PM 22      A.    I am 59.

02:08:17PM 23      Q.    And can you tell us a little bit about sort of your  
02:08:22PM 24      background, where you grew up, what you do for a living,  
02:08:25PM 25      do you have any children, things like that?

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02:08:26PM 1 A. Sure. I was born in Bremerton, Washington, here, and  
02:08:30PM 2 then we moved to a farm in Arlington, is where I was  
02:08:34PM 3 raised.

02:08:35PM 4 And then I went to college in Seattle. And I got  
02:08:42PM 5 married. I have two grown boys. One lives in Idaho, and  
02:08:46PM 6 one lives in New York. And I just recently moved from  
02:08:50PM 7 Washington to Idaho. I am a licensed insurance agent.

02:08:54PM 8 Q. When you were growing up as a child, where did you  
02:09:01PM 9 understand that your father worked?

02:09:03PM 10 A. I knew that he worked in the shipyards.

02:09:06PM 11 Q. How did you know that?

02:09:07PM 12 A. Dad told us. And my mom told us that he worked at  
02:09:11PM 13 the shipyard, he worked on the naval ships. I remember  
02:09:17PM 14 feeling proud, because he helped our military because he  
02:09:22PM 15 was working on those ships. I didn't know what he did on  
02:09:24PM 16 the ships. I was young. You know, so your imagination  
02:09:29PM 17 goes. So I assumed he worked on periscopes when I was a  
02:09:33PM 18 little kid. That's what I thought.

02:09:36PM 19 Q. Did you have an understanding at any time in your  
02:09:41PM 20 life about what your great-grandfather(sic), your father's  
02:09:47PM 21 father, did for a living?

02:09:49PM 22 A. Um-hum.

02:09:50PM 23 Q. What did he do?

02:09:51PM 24 A. Grandpa worked for Darigold. I don't know exactly  
02:09:58PM 25 what he did there, but I just knew that he did. I knew

02:10:03PM 1 that my mom's dad had cows and my dad's dad sold milk.

02:10:12PM 2 And that's what I knew as a young child.

02:10:14PM 3 Q. I want to fast forward to when you first learned that  
02:10:19PM 4 your father had this disease, mesothelioma. Okay. Can  
02:10:24PM 5 you tell us how you found out about that, just briefly?

02:10:29PM 6 A. Um-hum. I kept in contact with dad, because he lived  
02:10:34PM 7 in Arizona, on the telephone, and when he was diagnosed.  
02:10:39PM 8 He would always tell me when he was going to the doctor  
02:10:41PM 9 and what it was for. And then he told me that he was  
02:10:44PM 10 diagnosed in August, I think it was 2017, with  
02:10:49PM 11 mesothelioma.

02:10:50PM 12 Q. Did he ever tell you anything about where he believed  
02:10:54PM 13 he had -- Strike that.

02:10:57PM 14 Did he ever tell you about what he understood causes  
02:11:00PM 15 mesothelioma?

02:11:01PM 16 A. Yes. He knew that it was asbestos caused.

02:11:06PM 17 MR. CRAIG: Objection. Hearsay.

02:11:08PM 18 MR. ADAMS: Your Honor, it just goes to the  
02:11:10PM 19 consistency with the declaration.

02:11:11PM 20 THE COURT: Speak up.

02:11:12PM 21 MR. ADAMS: It is not offered for the truth of  
02:11:14PM 22 the matter asserted, it is offered for its consistency  
02:11:17PM 23 with the declaration.

02:11:19PM 24 THE COURT: She may answer.

02:11:25PM 25 By Mr. Adams:

\_\_\_\_\_  
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02:11:26PM 1 Q. And did he ever communicate to you where he believed  
02:11:30PM 2 he was exposed to asbestos?

02:11:31PM 3 A. Yes. He was very certain that it came from the  
02:11:35PM 4 shipyard.

02:11:36PM 5 Q. Can you tell us what he told you?

02:11:38PM 6 A. Um-hum. Yes. He said that he worked on, like -- all  
02:11:51PM 7 I can think of is like tubes, and that he would have to  
02:11:57PM 8 try to repair these, and that sometimes they wouldn't come  
02:12:01PM 9 apart and so they would have to use something to try to  
02:12:05PM 10 break them -- not joints, but the connections. And then  
02:12:12PM 11 the insides of those pipes -- that's what -- pipes, that  
02:12:18PM 12 asbestos would come out. Actually, he described that it  
02:12:23PM 13 just -- with his hands. He said, "It fell on me. And I  
02:12:25PM 14 was covered in it." It wasn't just breathing, he was  
02:12:29PM 15 physically covered in it.

02:12:30PM 16 Q. Did he tell you what those connections between the  
02:12:35PM 17 pipes were called?

02:12:38PM 18 A. If he did, I can't remember what word he would have  
02:12:45PM 19 said.

02:12:46PM 20 Q. Did he tell you what kind of tools he used when  
02:12:49PM 21 working on these connections between the pipes?

02:12:51PM 22 A. Um-hum. What the picture in my head was, was those  
02:12:59PM 23 wrench -- if you said the name -- I don't remember. When  
02:13:04PM 24 he was talking to me, that's the picture I had in my head,  
02:13:07PM 25 some kind of wrench.

02:13:08PM 1 Q. When did he tell you this information? Was it before  
02:13:14PM 2 or after he was diagnosed with mesothelioma?

02:13:21PM 3 A. That was after.

02:13:24PM 4 Q. Did your father ever tell you anything about whether  
02:13:36PM 5 or not he believed there was a cure to his mesothelioma?

02:13:41PM 6 A. No, no cure, just hope.

02:13:47PM 7 Q. Did he ever tell you about what he thought was going  
02:13:51PM 8 to happen to him?

02:13:52PM 9 A. Yes. He knew he was going to die from it.

02:13:59PM 10 Q. Moving forward to when your father went into the  
02:14:10PM 11 hospital. Are you with me?

02:14:12PM 12 A. Yeah.

02:14:12PM 13 Q. Okay. What was your involvement with your father's  
02:14:18PM 14 stay in the hospital, if any?

02:14:20PM 15 A. I moved to -- I went to visit dad. I know when he  
02:14:27PM 16 was in the hospital. But I went to visit him the first  
02:14:30PM 17 part of December. And then I ended up staying to take  
02:14:35PM 18 care of him. So while he was in the hospital, I was there  
02:14:39PM 19 helping -- being there for his support, and helping Gloria  
02:14:44PM 20 with things that needed to be done.

02:14:45PM 21 Q. How long did you stay?

02:14:46PM 22 A. I was there two and a half months.

02:14:49PM 23 Q. Were you -- did you stay until the end?

02:14:56PM 24 A. I did, um-hum. I would stay at the house at night.  
02:15:01PM 25 Gloria stayed all -- the whole time with dad. She would

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02:15:06PM 1 stay at the hospital. And then in the morning she would  
02:15:08PM 2 come and pick me up, and then I would go to the hospital  
02:15:11PM 3 and we would just stay with dad.

02:15:14PM 4 Q. Do you remember when your dad went into the hospital?

02:15:17PM 5 A. Yes.

02:15:17PM 6 Q. When was that, roughly? I guess I should ask, when  
02:15:26PM 7 did your father go into the hospital the time when he  
02:15:29PM 8 never left?

02:15:39PM 9 A. It was towards the end -- I don't know exactly if it  
02:15:44PM 10 was the end of January or the first part of February. I  
02:15:48PM 11 don't remember the exact time.

02:15:49PM 12 Q. Sometime between the end of January and early  
02:15:51PM 13 February?

02:15:51PM 14 A. Right. I just don't remember the date.

02:15:54PM 15 Q. And then what did you and Gloria do when your father  
02:16:00PM 16 was admitted to the hospital at this time -- at that time?  
02:16:07PM 17 Like, how did you and Gloria spend your days once your  
02:16:11PM 18 father had been admitted into the hospital?

02:16:13PM 19 MR. VEGA: Objection. Asked and answered.

02:16:15PM 20 THE WITNESS: Pardon?

02:16:16PM 21 MR. VEGA: Objection. Asked and answered.

02:16:18PM 22 THE COURT: She may answer.

02:16:20PM 23 THE WITNESS: I can --

02:16:22PM 24 By Mr. Adams:

02:16:22PM 25 Q. Continue.

02:16:23PM 1 A. Gloria would sit by dad, and I was working remotely.  
02:16:28PM 2 My company let me work remotely. They were up here in  
02:16:33PM 3 Washington. And then I worked remotely. So I would be in  
02:16:36PM 4 the corner working on my computer, and then Gloria would  
02:16:39PM 5 be with dad. And then we would switch, and she would sit  
02:16:42PM 6 on the chair or the couch they had, and then I would come  
02:16:46PM 7 sit next to dad. So it was like someone was always next  
02:16:50PM 8 to dad, so he knew that we were there with him.

02:16:56PM 9 And then if my nieces and nephews, or my sons, or my  
02:17:00PM 10 sisters had any kind of message for dad, then they would  
02:17:03PM 11 call me or text me, and I would tell that to dad, or at  
02:17:07PM 12 one time I would put the phone up so he could hear their  
02:17:11PM 13 voice, whatever they had to say to him.

02:17:14PM 14 Q. I want to just get right to the date when he signed  
02:17:21PM 15 the declaration, which was February 7th, 2018. Do you  
02:17:25PM 16 remember that?

02:17:25PM 17 A. Um-hum. I do.

02:17:27PM 18 Q. Can you tell us what you remember seeing? Strike  
02:17:32PM 19 that.

02:17:32PM 20 Were you in the room when the declaration was signed?

02:17:35PM 21 A. I was.

02:17:35PM 22 Q. Can you tell us what you saw?

02:17:36PM 23 A. Yes. Dad was, I thought, asleep on the hospital bed.  
02:17:47PM 24 He was laying there with his eyes closed. And then the  
02:17:51PM 25 notary came in, and he looked at dad and had said



02:17:55PM 1 something like, "Well, can he sign this?" Hearing that,  
02:18:00PM 2 dad sat up -- immediately sat up, eyes like wide open, and  
02:18:07PM 3 he put his finger out and he said, "I am coherent. I know  
02:18:12PM 4 what I am signing." And then he had the paper, signed it,  
02:18:17PM 5 and gave it back.

02:18:20PM 6 Q. What did your dad do after he signed the paper?

02:18:28PM 7 A. I can't -- I have to think if we talked a little bit,  
02:18:39PM 8 but I don't remember exactly. I think dad wanted to get  
02:18:46PM 9 some details about what was next, but I can't remember an  
02:18:51PM 10 exact conversation. I just remember that sitting up,  
02:18:55PM 11 because it was so abrupt, and it was so clear, and it was  
02:18:59PM 12 very, like, matter of fact.

02:19:07PM 13 Q. Do you remember anything else about whether or not  
02:19:09PM 14 there were conversations with anyone else in the room and  
02:19:14PM 15 your father?

02:19:16PM 16 A. During that time?

02:19:17PM 17 Q. Yes.

02:19:17PM 18 A. I'm sorry. I cannot remember.

02:19:24PM 19 Q. That's okay. Who was in the room?

02:19:25PM 20 A. Gloria was there, and I was there, and dad, and you  
02:19:31PM 21 were there, the doctor, and the notary was there. I can't  
02:19:39PM 22 remember if the doctor was there or not. The notary was  
02:19:41PM 23 there.

02:19:42PM 24 Q. Do you remember whether or not --

02:19:43PM 25 A. Oh, excuse me, Father Schimmel was there. And

02:19:49PM 1 someone else next to me.

02:19:53PM 2 Q. Do you remember anyone else being there?

02:19:56PM 3 A. That's who I remember. I remember there were a lot  
02:20:00PM 4 of people in that room. But those are who I remember.

02:20:03PM 5 Q. You mentioned earlier that your father knew there was  
02:20:20PM 6 not a cure to his disease?

02:20:23PM 7 A. Yes.

02:20:23PM 8 Q. Was there anything else that your father ever  
02:20:29PM 9 communicated to you about the fact that he knew he wasn't  
02:20:33PM 10 going to survive?

02:20:36PM 11 A. Yes, there was.

02:20:38PM 12 Q. Can you tell us what he told you?

02:20:40PM 13 A. Um-hum. Dad and Gloria were married in January. But  
02:20:50PM 14 Gloria didn't really recognize that, because it was the  
02:20:54PM 15 U.S. wedding. And they got married a second time in  
02:20:58PM 16 February. It was with her whole family, and with a  
02:21:01PM 17 Catholic ceremony, and her whole family was there. And so  
02:21:05PM 18 that was her wedding date. So they didn't really  
02:21:07PM 19 celebrate January.

02:21:09PM 20 But I was there in January. I said, "Dad, do you  
02:21:12PM 21 want me to run and get you an anniversary card for  
02:21:17PM 22 Gloria," because he couldn't move off the couch. And he  
02:21:22PM 23 said, "Well, you can go do that. She won't really  
02:21:26PM 24 recognize it, because February is our real anniversary,"  
02:21:31PM 25 he said. "I'm not going to make it there to our real

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anniversary." So I got that anniversary card. He signed it and gave it to her, because he knew he wasn't going to make it to the February real wedding day.

Q. When did you have that conversation with him, if you remember?

A. I do remember. It was the day of their anniversary, because I had thought, "Oh, anniversary, and there is no celebration going on," so I raced to the store and got it.

Q. Can you remind us what that day was, the U.S. anniversary?

A. I think January 19th is the U.S., and February 24th is the Catholic.

Q. A couple more questions. Going back to February 7th, 2018, what did your father look like on that day?

A. He was a bag of bones. He was just a skeleton. When I was in the hospital -- when dad was in the hospital and I was with him he said, "Promise me you will not take any pictures of me. I don't want anyone seeing me like this." He didn't want his friends coming in to see him, because he was just bones.

And it was just like not even skin over him. It was just this thin covering over these bones, and he was just -- I just remember when he was asleep, putting my arm next to him, and his arms were smaller than my arms. He was just a bone.

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02:23:24PM 1 And then whenever the nurses were taking care of him,  
02:23:30PM 2 he would always say, "Get her out of here. Get her out of  
02:23:34PM 3 here." He did not want me seeing how just nothing he was.

02:23:44PM 4 Q. Was there a time when he stopped saying, "Get her out  
02:23:47PM 5 of here"?

02:23:49PM 6 A. Yes. That was the day of the -- declaration day.

02:23:58PM 7 After that, that evening when the nurses were in, he  
02:24:01PM 8 didn't say, "Get her out of here." And then, of course,  
02:24:05PM 9 the day he passed, that morning, he didn't say anything.  
02:24:10PM 10 That's when I saw really how there was these big feet --  
02:24:17PM 11 big feet and this little leg.

02:24:22PM 12 Q. We have heard that he passed away the day after he  
02:24:26PM 13 signed the declaration?

02:24:28PM 14 A. That's right.

02:24:28PM 15 Q. Do you know, based -- Well, strike that.

02:24:36PM 16 Based on all the time you spent with him, and the  
02:24:42PM 17 care, and the time -- the months you spent with him, do  
02:24:45PM 18 you know why he held on until February 2018?

02:24:49PM 19 A. Yes, I believe that he wanted to be here for his  
02:25:06PM 20 deposition. He wanted to see this to the end. He wanted  
02:25:10PM 21 to make sure that -- I don't mean to say the wrong thing.  
02:25:25PM 22 He hated what happened to him, and he didn't want it to  
02:25:32PM 23 go -- just left. And so I think, in my opinion, he stayed  
02:25:37PM 24 around as long as he could to do his part, to make sure  
02:25:45PM 25 that something happened to -- I don't know, that he didn't

02:25:55PM 1 die and nothing happened, because in his words  
02:26:01PM 2 mesothelioma killed him.

02:26:08PM 3 MR. ADAMS: Thanks for answering my questions.  
02:26:11PM 4 Those are all my questions, your Honor.

02:26:13PM 5 MS. JOHNSON: Your Honor, can I just, for the  
02:26:15PM 6 record -- Obviously there is no jury here. Your Honor is  
02:26:19PM 7 capable of making the evidentiary calls during the course  
02:26:22PM 8 of the testimony, but just to reiterate, the defendants  
02:26:27PM 9 would object to the entire line of testimony that called  
02:26:31PM 10 for hearsay and speculation, and is without foundation or  
02:26:37PM 11 personal knowledge.

02:26:39PM 12 THE COURT: Just a minute. Ms. Brown, I am  
02:26:46PM 13 curious about what went on at the time of this signing.  
02:26:53PM 14 This paper didn't come from nowhere, it came from  
02:26:56PM 15 somewhere. Where did the paper come from, if you  
02:26:58PM 16 remember?

02:26:59PM 17 THE WITNESS: The actual typing up of the paper?

02:27:11PM 18 THE COURT: No. You are in this hotel room --  
02:27:15PM 19 Hotel? -- in this hospital room, and somebody produced  
02:27:23PM 20 the paper to be signed. Do you recall who produced it or  
02:27:28PM 21 where it came from?

02:27:34PM 22 THE WITNESS: You're right, it didn't just  
02:27:47PM 23 appear. It must have come --

02:27:49PM 24 THE COURT: If you don't remember, that's okay.

02:27:54PM 25 THE WITNESS: I guess -- I know it was there.

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02:28:01PM 1 THE COURT: I am just testing your recall here  
02:28:05PM 2 about what went on.

02:28:07PM 3 THE WITNESS: Right.

02:28:08PM 4 THE COURT: Do you recall who handed the paper to  
02:28:11PM 5 your dad?

02:28:12PM 6 THE WITNESS: My mind is racing to think of how  
02:28:16PM 7 all of that happened. It probably came from Ben. I don't  
02:28:24PM 8 know how else he would have gotten it.

02:28:26PM 9 THE COURT: Do you recall what Mr. Adams said to  
02:28:37PM 10 your dad at that point?

02:28:38PM 11 THE WITNESS: You know, I don't. I don't. It  
02:28:42PM 12 was very startling the way that dad just bolted up like  
02:28:47PM 13 that, with his eyes. I am really still focused on that.  
02:28:52PM 14 I don't really remember anything transpiring. I remember  
02:28:56PM 15 dad signed it.

02:28:57PM 16 THE COURT: Do you remember how many pages were  
02:28:59PM 17 in it?

02:29:00PM 18 THE WITNESS: Oh, no, sir, I don't.

02:29:03PM 19 THE COURT: Did your dad have something to write  
02:29:05PM 20 on there when he sat up?

02:29:11PM 21 THE WITNESS: Like something hard behind the  
02:29:16PM 22 piece of paper?

02:29:18PM 23 THE COURT: Yeah.

02:29:18PM 24 THE WITNESS: I'm trying to remember. It seems  
02:29:21PM 25 like there must have been something, but I don't recall if

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02:29:25PM 1 something was handed to him or if he was just on that  
02:29:28PM 2 table that goes over the bed. I don't remember.

02:29:30PM 3 THE COURT: Do you remember anything that the  
02:29:32PM 4 notary said when he was there?

02:29:35PM 5 THE WITNESS: The only thing I remember the  
02:29:37PM 6 notary saying was, "Well, is he able to sign this?" when  
02:29:42PM 7 he walked in. That's when dad sat up. And then I don't  
02:29:47PM 8 remember really anything after that. I'm sorry. But that  
02:29:52PM 9 sitting up was -- I don't mean to be disrespectful to my  
02:29:54PM 10 dad, that was really freaky, because he was just like  
02:29:59PM 11 laying down and eyes closed. You thought he was asleep,  
02:30:02PM 12 but he heard every single thing that was going on, and he  
02:30:06PM 13 was up, and he was all of a sudden alert. He was like  
02:30:10PM 14 that for a while.

02:30:11PM 15 THE COURT: Do you recall anyone telling your dad  
02:30:13PM 16 what the document was?

02:30:16PM 17 THE WITNESS: I'm sure someone did say that, but,  
02:30:19PM 18 again -- You know, I feel embarrassed I didn't pay  
02:30:23PM 19 attention to these sorts of details. I'm sure someone  
02:30:26PM 20 told him what it was. He knew what he was signing. He  
02:30:29PM 21 knew why that notary was there. And he knew that he was  
02:30:34PM 22 trying to get, you know, for lack of a better term,  
02:30:41PM 23 justice for what he had gone through. He knew that's what  
02:30:44PM 24 he was signing. He knew that was his statement. I guess  
02:30:48PM 25 that's it, he knew that was his statement that he was

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02:30:51PM 1 signing.

02:30:53PM 2 THE COURT: I guess the next question is, how do  
02:30:58PM 3 you know that he knew it was his statement?

02:31:00PM 4 THE WITNESS: Because he was so clear. It was  
02:31:06PM 5 night and day. He was very clear that that -- he knew  
02:31:10PM 6 what he was signing, he knew that it was his statement  
02:31:14PM 7 about what had happened to him with that asbestos.

02:31:19PM 8 THE COURT: Did your dad say anything during this  
02:31:24PM 9 process?

02:31:26PM 10 THE WITNESS: You know, I want to say that I feel  
02:31:31PM 11 like afterwards he talked a little bit, but I don't really  
02:31:35PM 12 remember anything like that.

02:31:38PM 13 THE COURT: All right.

02:31:43PM 14 CROSS-EXAMINATION

02:31:46PM 15 By Ms. Weglarz:

02:31:46PM 16 Q. Ms. Brown; is that right?

02:31:48PM 17 A. Yes.

02:31:48PM 18 Q. I just have a few questions for you.

02:31:51PM 19 A. Okay.

02:31:51PM 20 Q. Did your father normally wear glasses?

02:31:56PM 21 A. Yes.

02:31:57PM 22 Q. Did he wear glasses to read?

02:31:59PM 23 A. Probably.

02:32:04PM 24 Q. Did he have glasses on at the time that he signed  
02:32:08PM 25 this document?

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02:32:09PM 1 A. I actually think he did, because I think I remember  
02:32:14PM 2 that it was odd to me that dad asked for his glasses.  
02:32:17PM 3 That's what I remember.  
02:32:19PM 4 Q. So he sat up and asked for glasses?  
02:32:22PM 5 A. When it was time to sign.  
02:32:23PM 6 Q. And you have a financial stake in this case, correct?  
02:32:29PM 7 A. Yes.  
02:32:30PM 8 Q. A percentage of the settlements will go to you,  
02:32:35PM 9 correct?  
02:32:35PM 10 A. Yes.  
02:32:36PM 11 Q. You told us that your dad had related to you when he  
02:32:40PM 12 first thought that asbestos in the shipyards caused his  
02:32:46PM 13 illness?  
02:32:47PM 14 A. Um-hum.  
02:32:47PM 15 Q. Do you remember when you had that conversation, what  
02:32:49PM 16 month?  
02:32:50PM 17 A. That would have been in August when he was diagnosed.  
02:32:54PM 18 Q. And he had been having abnormal CTs of his chest  
02:33:01PM 19 prior to August, correct?  
02:33:02PM 20 A. I don't know that for sure. I don't know.  
02:33:05PM 21 Q. You don't know if he was going to the doctor months  
02:33:08PM 22 before that?  
02:33:09PM 23 A. I know that he was going to see a doctor. He went to  
02:33:12PM 24 the doctor regularly, but I don't know what for. I mean,  
02:33:16PM 25 I don't know if he had chest x-rays or anything like that.

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02:33:19PM 1 Q. And you were the daughter responsible for finding  
02:33:23PM 2 your father's attorneys, correct?

02:33:25PM 3 A. That's true.

02:33:26PM 4 Q. How did you find the attorneys?

02:33:28PM 5 A. Some friends of mine had been involved in an asbestos  
02:33:38PM 6 case where this law firm had represented them, and he had  
02:33:45PM 7 told me -- this friend had told me that he had been  
02:33:49PM 8 deposed, you know, just in conversation, months ago --  
02:33:54PM 9 months before. I don't even know how long. Before dad  
02:33:58PM 10 was even diagnosed.

02:34:00PM 11 And then when I had -- They were actually my  
02:34:03PM 12 landlords when I had told them my dad has been diagnosed  
02:34:06PM 13 with this. He said, "That is what I was deposed for."  
02:34:12PM 14 And so then he gave me the name.

02:34:14PM 15 Q. And when did you first call your father's attorneys?

02:34:18PM 16 A. In December.

02:34:20PM 17 Q. In December?

02:34:20PM 18 A. Um-hum.

02:34:22PM 19 Q. Do you remember what part of December?

02:34:28PM 20 A. It would have -- I went to visit dad the first part  
02:34:32PM 21 of December, so it was probably that early part of  
02:34:36PM 22 December, between the 1st and 10th, sometime in there.

02:34:41PM 23 Q. And when you met with the lawyers -- Actually, let  
02:34:44PM 24 me strike that.

02:34:44PM 25 The first time you talked to the lawyers, was it in

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02:34:47PM 1 person or on the phone?

02:34:48PM 2 A. I called them. I actually called a couple, because  
02:34:53PM 3 dad was skeptical about what to do. And so he said, "Call  
02:34:57PM 4 a couple." And I did. And then we went with --

02:35:03PM 5 Q. Did you go with your father to meet the attorneys?

02:35:06PM 6 A. They came to dad's house. Dad couldn't really get up  
02:35:11PM 7 and move around.

02:35:12PM 8 Q. And before they took on your case, did they ask your  
02:35:18PM 9 dad to tell them about his asbestos exposures?

02:35:21PM 10 MR. ADAMS: Objection, your Honor. It lacks  
02:35:26PM 11 foundation, as far as "before they took on your case." It  
02:35:29PM 12 calls for a legal conclusion. And it may seek information  
02:35:32PM 13 in violation of the attorney-client privilege. And I  
02:35:37PM 14 don't know if the Court wants to instruct the witness on  
02:35:39PM 15 what she can say and can't, or I can.

02:36:04PM 16 THE COURT: I'm not sure why you even want to go  
02:36:06PM 17 into this.

02:36:11PM 18 MS. WEGLARZ: Let me see if I can ask one more  
02:36:13PM 19 question that might clear it up.

02:36:16PM 20 By Ms. Weglarz:

02:36:17PM 21 Q. When did you actually retain the lawyers? Do you  
02:36:21PM 22 remember what date?

02:36:24PM 23 A. I don't remember the date, no.

02:36:25PM 24 Q. I want to ask you about that declaration that your  
02:36:31PM 25 dad signed. Who drafted that declaration?

02:36:36PM 1 A. Who said the words or who --

02:36:41PM 2 THE COURT: Who wrote it.

02:36:42PM 3 THE WITNESS: -- prepared it up? The attorneys  
02:36:45PM 4 did.

02:36:47PM 5 By Ms. Weglarz:

02:36:52PM 6 Q. Were you there during any of the time that this  
02:36:55PM 7 declaration was prepared?

02:36:56PM 8 A. Not that I know of.

02:36:58PM 9 Q. Do you know where the attorneys got the information  
02:37:05PM 10 to put into the declaration?

02:37:11PM 11 MR. ADAMS: I have to object just to preserve the  
02:37:14PM 12 privilege. I think the question can be answered yes or  
02:37:16PM 13 no. I have to object, attorney-client privilege, just in  
02:37:21PM 14 case there is an answer beyond yes or no.

02:37:24PM 15 THE COURT: You can answer the question.

02:37:25PM 16 THE WITNESS: So would you repeat it again,  
02:37:27PM 17 please?

02:37:28PM 18 By Ms. Weglarz:

02:37:29PM 19 Q. Do you know where the information in that declaration  
02:37:31PM 20 came from?

02:37:31PM 21 A. Yes.

02:37:31PM 22 Q. And where did it come from?

02:37:39PM 23 MR. ADAMS: I think it can be answered without  
02:37:42PM 24 violating the attorney-client privilege, but I do want to  
02:37:45PM 25 make my objection just in case the answer discloses a

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02:37:48PM 1 confidential communication between lawyer and client.

02:37:52PM 2 THE COURT: I think that first question is -- the  
02:37:56PM 3 preliminary question is how do you know where it came  
02:37:59PM 4 from.

02:38:01PM 5 THE WITNESS: How do I know where the information  
02:38:05PM 6 on the declaration came from?

7 By Ms. Weglarz:

02:38:07PM 8 Q. Yes.

02:38:08PM 9 A. Because I know my dad was talking with the attorney  
02:38:11PM 10 about it.

02:38:13PM 11 Q. And how do you know that?

02:38:14PM 12 A. Sometimes I was asked to leave the room, because it  
02:38:21PM 13 was private between them, because it's my dad who filed  
02:38:24PM 14 the lawsuit, not me.

02:38:25PM 15 Q. And when did those conversations take place?

02:38:28PM 16 A. Like what month?

02:38:31PM 17 Q. Yes.

02:38:31PM 18 A. In December.

02:38:32PM 19 Q. So you were not present for any of those  
02:38:39PM 20 conversations, though?

02:38:41PM 21 A. There was some times when I was -- in the beginning,  
02:38:49PM 22 I guess, I was with him.

02:38:52PM 23 Q. Actually, maybe I should have laid a little bit more  
02:38:55PM 24 foundation. You told us you don't know how many pages are  
02:38:58PM 25 in this declaration, correct?

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02:39:00PM 1 A. Um-hum.

02:39:00PM 2 Q. Is that right?

02:39:01PM 3 A. Yes, that's correct.

02:39:02PM 4 Q. Have you ever read the declaration?

02:39:05PM 5 A. I want to say in the hospital room I may have read

02:39:13PM 6 that, but I can't remember what it all says.

02:39:17PM 7 Q. Was the first time you saw the declaration in the

02:39:19PM 8 hospital room?

02:39:22PM 9 A. Yes.

02:39:22PM 10 Q. So would it be fair to say you don't know how the

02:39:33PM 11 declaration was actually put together?

02:39:35PM 12 A. I don't know the specific logistics of it. I know it

02:39:40PM 13 was between dad and his lawyer.

02:39:42PM 14 Q. And do you know when that actual document was

02:39:45PM 15 created?

02:39:45PM 16 A. I don't know.

02:39:46PM 17 Q. Do you know where the declaration was created?

02:39:56PM 18 A. I don't.

02:39:58PM 19 Q. Was your father Catholic?

02:40:13PM 20 A. Yes, because of his association with Gloria. I think

02:40:18PM 21 that's the faith that he took on, yes.

02:40:20PM 22 Q. Was he baptized?

02:40:21PM 23 A. That, I don't know.

02:40:24PM 24 Q. When your dad was diagnosed with mesothelioma, was he

02:40:37PM 25 concerned about taking care of Maria after he died?

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02:40:40PM 1 A. Dad's number one concern was always taking care of  
02:40:49PM 2 Gloria. He really felt like something needed to be done  
02:40:58PM 3 for what happened to him.

02:41:08PM 4 MS. WEGLARZ: Thank you. I will pass the  
02:41:10PM 5 witness.

02:41:11PM 6 CROSS-EXAMINATION

02:41:13PM 7 By Mr. Vega:

02:41:55PM 8 Q. Good afternoon, Ms. Brown. I'm sorry we are meeting  
02:41:59PM 9 under these circumstances.

02:42:00PM 10 A. Thank you.

02:42:01PM 11 Q. You told us that -- First of all, directing your  
02:42:08PM 12 attention to the hospital. And we are talking about  
02:42:12PM 13 Abrazo West Hospital, right?

02:42:14PM 14 A. Yes.

02:42:14PM 15 Q. What type of bed was your father in?

02:42:18PM 16 A. I think they just call it a standard hospital bed.

02:42:25PM 17 Q. And you just motioned with your arm up and down.  
02:42:29PM 18 This is the electronic hospital beds that incline and  
02:42:32PM 19 recline?

02:42:32PM 20 A. Um-hum, and can go up and down or forward.

02:42:36PM 21 Q. During your father's hospital stay, when he was --  
02:42:43PM 22 Is that how you would move him upright, through the  
02:42:47PM 23 mechanical bed?

02:42:49PM 24 A. No. The nurses would -- It was already kind of at  
02:42:54PM 25 an incline, but the nurses would actually come in and move

02:42:58PM 1 him, and put pillows under him, and kind of support him  
02:43:01PM 2 that way, and move in different ways. It was more of  
02:43:04PM 3 that. I don't think he was ever flat unless they were  
02:43:08PM 4 like changing the sheets, that sort of thing.

02:43:10PM 5 Q. And I saw, based on the hospital records, that he was  
02:43:15PM 6 also being treated for bed sores?

02:43:18PM 7 A. Yes.

02:43:19PM 8 Q. And that's because he wasn't able to walk around or  
02:43:22PM 9 move around?

02:43:22PM 10 A. Or move, yeah.

02:43:23PM 11 Q. When is the last time you saw your father walking on  
02:43:28PM 12 his own?

02:43:37PM 13 A. I think I did not see him walk when he went into the  
02:43:44PM 14 hospital the last time. But any time he would have gotten  
02:43:49PM 15 up to go to the restroom, then I was told to get out of  
02:43:52PM 16 the room. So I don't know if he walked to the restroom or  
02:43:56PM 17 if he just had a bed pan. I don't know that. Me visually  
02:44:01PM 18 seeing him walk, the last time was when he went into the  
02:44:08PM 19 hospital. But if he did walk, I wasn't allowed in the  
02:44:13PM 20 room then.

02:44:13PM 21 Q. Just for the record, he entered the hospital, that  
02:44:16PM 22 was January 28th? Does that refresh your recollection as  
02:44:19PM 23 to when he went in?

02:44:20PM 24 A. I knew it was sometime at the end of January, first  
02:44:23PM 25 part of February, but I just didn't know the date --

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02:44:26PM 1 remember the date.

02:44:27PM 2 Q. You mentioned that your father said some words as  
02:44:40PM 3 soon as he heard the notary. He said, "I am coherent. I  
02:44:45PM 4 know what I am signing." Did you hear your father say any  
02:44:54PM 5 other words that day?

02:44:55PM 6 A. I want to say that he still spoke after, but I don't  
02:45:01PM 7 know -- I don't remember. I just remember those, because  
02:45:04PM 8 it was just so abrupt.

02:45:07PM 9 Q. Given that abruptness, when was the last time you had  
02:45:16PM 10 heard your father utter any words before he made that  
02:45:20PM 11 statement?

02:45:22PM 12 A. I would like -- Believe me, I have been racking my  
02:45:26PM 13 brain to try and remember what his real last words were,  
02:45:32PM 14 and I just don't recall. I can't even tell you if -- how  
02:45:37PM 15 many days before, or what it was. Just my own -- Of  
02:45:45PM 16 course, I want it to be, "I love you." I have been  
02:45:47PM 17 racking my brain, but I honestly can't remember.

02:45:50PM 18 Q. I just want to make sure that you and I are on the  
02:45:54PM 19 same page. I wasn't necessarily asking you for the very  
02:45:57PM 20 last words that he said. I was trying to get the words --  
02:46:01PM 21 the last words that he said before he said, "I am  
02:46:09PM 22 coherent. I know what I am signing."

02:46:13PM 23 A. Um-hum. You know, I don't know. Some of his friends  
02:46:23PM 24 stopped by the hospital to visit him, but I just can't  
02:46:28PM 25 remember what day it was. Like I said, I have been trying

02:46:31PM 1 to remember; not for this, but just for my own-self. I  
02:46:35PM 2 just cannot remember. I remember those friends coming in  
02:46:38PM 3 and he was talking with them, but I don't remember how  
02:46:41PM 4 many days that was before he actually passed. I just  
02:46:45PM 5 cannot remember.

02:46:46PM 6 Q. Is it fair to say there was at least a day or more  
02:46:55PM 7 that he had not spoken up until the time that he said, "I  
02:46:58PM 8 am coherent. I know what I am signing"?

02:47:00PM 9 A. Um-hum. These men, some were retired and some were  
02:47:09PM 10 working. I want to say a weekend, the weekend before. I  
02:47:13PM 11 am only guessing. I don't remember that. I just don't  
02:47:16PM 12 remember.

02:47:16PM 13 Q. Understanding that you are guessing as to the date.  
02:47:19PM 14 But it was when those friends came over, that was the last  
02:47:24PM 15 time you heard your father speak before he said the words,  
02:47:27PM 16 "I am coherent. I know what I am signing"?

02:47:30PM 17 A. Well, I don't want to say that. I remember that  
02:47:33PM 18 conversation. I remember them being there and dad was  
02:47:37PM 19 speaking with them. But I want to say he still spoke  
02:47:40PM 20 after that, but I just don't remember. I just don't  
02:47:44PM 21 remember.

02:47:44PM 22 Q. When you were in the hospital with your father at  
02:47:50PM 23 Abrazo in that last admission, was your mother always  
02:47:58PM 24 there when you were there?

02:47:59PM 25 A. Gloria is my stepmom.

02:48:01PM 1 Q. Sorry.

02:48:02PM 2 A. No, that's okay. There were a few times when she  
02:48:06PM 3 would go to the restroom or go get some food, and then I  
02:48:12PM 4 would be with dad on my own. But he wasn't typically by  
02:48:16PM 5 himself, unless she was coming to pick me up from the  
02:48:19PM 6 house.

02:48:20PM 7 Q. When is the last time you heard your father have a  
02:48:24PM 8 conversation with your mother -- sorry, not with your  
02:48:27PM 9 mother, with Gloria Varney?

02:48:29PM 10 A. Sure. Um-hum. I don't know. You know, she was  
02:48:40PM 11 always talking to him, always talking in his ear, always  
02:48:43PM 12 rubbing his face and talking to him. But I just -- I  
02:48:48PM 13 honestly cannot remember the last specific day that he  
02:48:52PM 14 spoke. I just cannot remember.

02:48:55PM 15 Q. You told us that at some point he asked for his  
02:49:04PM 16 glasses. Who handed him his glasses?

02:49:09PM 17 A. I don't know. It would have been -- I would say it  
02:49:15PM 18 would be Gloria, but I don't know that for 100 percent. I  
02:49:20PM 19 don't know. Because of the positioning, she was on what  
02:49:24PM 20 would have been his left side. That's where she was  
02:49:27PM 21 always at. She wasn't here. She would have been the one  
02:49:32PM 22 who knew where they were. She was the one who kept track  
02:49:35PM 23 of everything.

02:49:36PM 24 Q. And what were the precise words that he used to ask  
02:49:39PM 25 for his glasses?

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02:49:40PM 1 A. I want to say, "I need my glasses," but, you know, I  
02:49:46PM 2 don't know that for sure.

02:49:47PM 3 Q. And did he say that before he said he was coherent,  
02:49:53PM 4 or was that after?

02:49:54PM 5 A. No. He was, I thought, asleep before. So it would  
02:49:59PM 6 have been after.

02:50:00PM 7 Q. And so then are those the last words that he said, "I  
02:50:06PM 8 need my glasses," or was it something else that was --

02:50:09PM 9 A. I don't know. I can't remember if he spoke anymore,  
02:50:15PM 10 if there was any little bit of a conversation afterward,  
02:50:18PM 11 after the signing and the notary left. I just don't  
02:50:25PM 12 remember that.

02:50:25PM 13 Q. When was the last time before the signing that you  
02:50:28PM 14 saw your father wearing those glasses?

02:50:32PM 15 A. The details, I just don't know. I didn't know to pay  
02:50:44PM 16 attention to those things. I just don't know.

02:50:47PM 17 Q. Other than the conversation with the -- his friends  
02:50:54PM 18 who came to visit him approximately the weekend before he  
02:50:58PM 19 passed, do you recall seeing your father speak with  
02:51:03PM 20 anybody else?

02:51:06PM 21 A. Only the nurses or Gloria. And then Gloria's niece  
02:51:14PM 22 and her husband came in. I don't remember what day they  
02:51:20PM 23 showed up.

02:51:22PM 24 Q. And just --

02:51:27PM 25 A. I am trying to remember if he spoke with them.

02:51:31PM 1 **Sorry.**

02:51:32PM 2 **Q. Do you know if that was after his friends came?**

02:51:36PM 3 **A. It would have been after they came, because Blanca is**  
02:51:49PM 4 **a niece, and she was there when dad passed. It was**  
02:51:53PM 5 **Blanca, Gloria and I, were with dad when he passed.**

02:51:57PM 6 **Q. Can you tell us the names of the friends that came to**  
02:52:00PM 7 **visit your dad?**

02:52:02PM 8 **A. Um-hum. It was Greg -- There were three of them. I**  
02:52:28PM 9 **believe it was Greg, Mark, and I don't remember the third**  
02:52:33PM 10 **guy's name.**

02:52:34PM 11 **Q. Do you remember Greg's last name?**

02:52:36PM 12 **A. No. Greg -- I would have to look. I don't know.**

02:52:45PM 13 **Q. Do you know Mark's last name?**

02:52:47PM 14 **A. Yeah, I should know Mark. I don't remember this**  
02:52:55PM 15 **minute. Mark's name will come to me, I think.**

02:53:03PM 16 **Q. Did your father use a computer?**

02:53:12PM 17 **A. Yes.**

02:53:13PM 18 **Q. Did you ever see your father using a computer while**  
02:53:20PM 19 **he was admitted at Abrazo?**

02:53:23PM 20 **A. No.**

02:53:23PM 21 **Q. Did you ever witness a computer -- other than the**  
02:53:32PM 22 **hospital staff computer, did you ever witness a computer**  
02:53:36PM 23 **inside of your father's room?**

02:53:38PM 24 **A. My laptop was there, because I worked in the corner.**

02:53:42PM 25 **Q. Other than yours, did you ever witness any other**

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02:53:46PM 1 laptop? I don't know whether you answered. I thought I  
02:53:56PM 2 saw you move your head.

02:53:57PM 3 A. I wasn't answering. I was trying to think. Sorry.  
02:54:03PM 4 My laptop was there, but we wouldn't -- I don't know if --  
02:54:09PM 5 I don't know if Ben had a computer there. I had my  
02:54:13PM 6 computer there, but there was no other computer. Gloria  
02:54:18PM 7 didn't use the computer.

02:54:20PM 8 Q. Did you ever observe Mr. Adams -- when you said  
02:54:28PM 9 "Ben," you are referring to Mr. Adams?

02:54:30PM 10 A. (Nodding).

02:54:31PM 11 Q. I would just need a verbal response.

02:54:33PM 12 A. Yes. Sorry.

02:54:35PM 13 Q. That's okay. Did you ever observe Mr. Adams on his  
02:54:37PM 14 computer, typing?

02:54:42PM 15 A. Yes.

02:54:43PM 16 Q. When he was typing, what was happening at that time?

02:54:51PM 17 A. I just thought he was taking notes for himself, other  
02:54:56PM 18 than writing. I don't know.

02:54:57PM 19 Q. When was the last time that you saw Mr. Adams typing  
02:55:03PM 20 inside of your father's hospital room?

02:55:05PM 21 A. I'm sorry. I don't know. I don't know.

02:55:09PM 22 Q. On how many occasions did you see Mr. Adams in your  
02:55:15PM 23 father's hospital room at Abrazo?

02:55:22PM 24 A. My goodness. He was there, of course, for the  
02:55:41PM 25 deposition -- not the deposition, the notary. I can't

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02:55:47PM 1 remember if Ben was there when dad passed. I don't know.

02:56:01PM 2 Q. My question was not necessarily when, but thank you

02:56:08PM 3 for that. I was asking on how many days -- how many

02:56:11PM 4 occasions did you see Mr. Adams at the Abrazo Hospital?

02:56:16PM 5 A. I don't know. I don't know.

02:56:18PM 6 Q. Do you know if it was more than once?

02:56:24PM 7 A. Yes, I am sure it was more than once.

02:56:27PM 8 Q. And when you say you're sure that it was more than

02:56:35PM 9 once, how do you know that?

02:56:36PM 10 A. I guess I don't know. I guess -- I know he was there

02:56:49PM 11 on the day the notary was there. I can't remember if he

02:56:57PM 12 was there the day that dad actually passed. I'm sure he

02:57:03PM 13 must have come in before the notary, because that's how I

02:57:07PM 14 knew the notary was coming. But I don't know how many

02:57:10PM 15 days.

02:57:10PM 16 Q. When you say "before," are you talking about the same

02:57:14PM 17 day or are you talking about a different day? You just

02:57:17PM 18 said you knew he was there before.

02:57:20PM 19 A. Before the notary came?

02:57:22PM 20 Q. Right. I am trying to figure out, when you say you

02:57:25PM 21 knew Mr. Adams was there before the notary came, are you

02:57:28PM 22 saying that he was there that morning before the notary

02:57:30PM 23 came?

02:57:30PM 24 A. Yes.

02:57:31PM 25 Q. You are not saying he was there the day before the

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02:57:33PM 1 notary came?

02:57:34PM 2 A. Oh, I'm so sorry. Yes, I believe he was there the  
02:57:38PM 3 day before the notary came.

02:57:40PM 4 Q. So we have two days now. We have before the notary  
02:57:47PM 5 arrived and then the day that the notary arrived. Any  
02:57:50PM 6 other day that you recall Mr. Adams in your father's  
02:57:54PM 7 hospital room?

02:57:55PM 8 A. I don't remember.

02:57:57PM 9 Q. Were you present in the hospital when the priest  
02:58:12PM 10 arrived for the first day, so this would be February 6th?

02:58:20PM 11 A. Yes. Yes.

02:58:26PM 12 Q. Do you recall whether Mr. Adams was in the room --

02:58:30PM 13 A. Yes.

02:58:31PM 14 Q. -- at that time?

02:58:33PM 15 A. Yes, he was. Yes.

02:58:34PM 16 Q. And then the priest was told to come back the next  
02:58:39PM 17 day?

02:58:39PM 18 A. Right.

02:58:40PM 19 Q. And who instructed the priest to come back the next  
02:58:44PM 20 day?

02:58:44PM 21 A. I think Mr. Adams did.

02:58:47PM 22 Q. Do you recall -- Let me strike that.

02:59:01PM 23 You told us earlier that you saw the declaration the  
02:59:09PM 24 day that it was signed; is that right?

02:59:12PM 25 A. Yes. Sorry. Yes.

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02:59:15PM 1 Q. Is that the first time that you saw that declaration?

02:59:19PM 2 A. Yes, I believe so.

02:59:20PM 3 Q. So the day it was signed was the first time you saw

02:59:23PM 4 it?

02:59:24PM 5 A. Yes.

02:59:26PM 6 Q. Did you -- You said you must have -- I don't want

02:59:31PM 7 to put words in your mouth. Do you think that you read

02:59:35PM 8 the declaration before your father signed it or after your

02:59:41PM 9 father signed it?

02:59:42PM 10 A. I think after he signed it, I think.

02:59:44PM 11 Q. So after he signed it was the first time you read it?

02:59:48PM 12 A. I think so.

02:59:49PM 13 Q. Can you go back to -- can you recall what time you

03:00:00PM 14 got to the hospital that day?

03:00:02PM 15 A. On the signing day?

03:00:05PM 16 Q. Yes. February 7th.

03:00:06PM 17 A. Usually Gloria had me there by 9:00, so it would

03:00:14PM 18 probably have been around 9:00. It could have been a

03:00:17PM 19 little bit before. But it was always in that time --

03:00:21PM 20 around that time.

03:00:22PM 21 Q. And so -- I am just trying to clear this up, because

03:00:29PM 22 when we spoke with Mrs. Gloria Varney she told us that she

03:00:36PM 23 stayed in the hospital that day that the declaration was

03:00:40PM 24 signed. So do you know how it was that you got to the

03:00:44PM 25 hospital on that day?

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03:00:48PM 1 A. The only way I ever got to the hospital was by Gloria  
03:00:52PM 2 driving me. But one day dad's friend Mark drove me to the  
03:00:57PM 3 hospital. But I didn't think it was that signing day.

03:01:02PM 4 Q. Are you aware that on several occasions when we spoke  
03:01:07PM 5 with Ms. Gloria Varney she never mentioned that you were  
03:01:11PM 6 present at the signing?

03:01:13PM 7 A. I didn't know that, no.

03:01:14PM 8 Q. Are you aware that Mr. Adams responded to discovery,  
03:01:20PM 9 and when he gave us the list of who was present at the  
03:01:23PM 10 hospital he did not include you as someone who was present  
03:01:26PM 11 at the hospital?

03:01:27PM 12 A. When my dad signed the declaration?

03:01:31PM 13 Q. Yes.

03:01:31PM 14 A. But I know I was there.

03:01:40PM 15 Q. So my question, again, is how did you get there that  
03:01:48PM 16 day?

03:01:48PM 17 A. I thought Gloria came and picked me up.

03:01:50PM 18 Q. And so what time do you think she came to pick you  
03:01:53PM 19 up?

03:01:53PM 20 A. In the morning she would have -- she usually got to  
03:01:57PM 21 the house around 7:30, and she got herself ready, and then  
03:02:02PM 22 we left and went back to the hospital around 9:00 -- 8:30,  
03:02:07PM 23 9:00, somewhere around there.

03:02:08PM 24 Q. When you arrived at the hospital on February 7th at  
03:02:11PM 25 8:30 or 9:00, who was present at that time?

03:02:16PM 1 A. It would have been dad, and then Gloria and I came  
03:02:28PM 2 in.

03:02:28PM 3 Q. At that time Mr. Adams was not in the room?

03:02:35PM 4 A. I don't know. I can't remember that. I don't know.

03:02:51PM 5 Q. Do you remember the order in which the people began  
03:02:59PM 6 arriving on February 7th?

03:03:01PM 7 A. You mean when Father Schimmel got there and the  
03:03:06PM 8 notary?

03:03:07PM 9 Q. Yes.

03:03:11PM 10 A. I believe Father Schimmel was there and the notary  
03:03:15PM 11 came after that.

03:03:15PM 12 Q. And where was Mr. Adams in relation to Father  
03:03:19PM 13 Schimmel and the notary, Mr. Parris?

03:03:21PM 14 A. Mr. Adams would have probably been on the left side  
03:03:27PM 15 of dad, and Father Schimmel was there, and the notary was  
03:03:33PM 16 just like -- came in the door on the right-hand side, and  
03:03:36PM 17 was just kind of standing there.

03:03:38PM 18 Q. Again, I am trying to get the order of how they  
03:03:41PM 19 arrived, that's all. You believe Father Schimmel arrived  
03:03:46PM 20 first?

03:03:46PM 21 A. Well, I guess Ben -- Mr. Adams arrived first, and  
03:03:50PM 22 then Mr. -- Father Schimmel, and then the notary was last.

03:03:55PM 23 Q. And you began your answer with you guess. If you  
03:03:59PM 24 know.

03:03:59PM 25 A. Because I didn't pay attention to who came in when or

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03:04:02PM 1 what time. My mind is trying to flip back there to  
03:04:07PM 2 exactly what happened. It is also trying to figure out if  
03:04:11PM 3 that's the day that -- Now, I know Gloria brought me  
03:04:23PM 4 to -- That's bugging me that I can't remember. I don't  
03:04:33PM 5 know the order. That's what I believe happened, that it  
03:04:39PM 6 was first Mr. Adams, then Father Schimmel, and then the  
03:04:43PM 7 notary.

03:04:43PM 8 Q. Was it your intention -- Let me just strike all  
03:04:53PM 9 that.

03:04:53PM 10 Putting the declaration aside, you are aware that  
03:04:57PM 11 Mr. Adams had scheduled a videotaped deposition of your  
03:05:01PM 12 father? Are you aware?

03:05:02PM 13 A. Yes.

03:05:03PM 14 THE COURT: Excuse me, counsel. The time has  
03:05:06PM 15 slipped by me. We need to take a break. My court  
03:05:11PM 16 reporter will complain. I will take ten minutes. A  
03:05:17PM 17 quarter after.

03:18:25PM 18 (Recessed.)

03:19:26PM 19 THE COURT: Okay. Moving right along.

03:19:34PM 20 MR. VEGA: May I inquire?

03:19:36PM 21 THE COURT: Yes.

03:19:37PM 22 By Mr. Vega:

03:19:38PM 23 Q. Before we broke I was asking you about whether you  
03:19:43PM 24 intended to be present during the videotaped deposition of  
03:19:49PM 25 your father.

03:19:56PM 1 A. I didn't know if I could be or not. I don't know  
03:19:58PM 2 that we ever talked about it. I don't know if I thought I  
03:20:02PM 3 would or wouldn't be.

03:20:04PM 4 Q. Do you recall that the videotaped deposition of your  
03:20:09PM 5 father was scheduled for February 7th?

03:20:15PM 6 A. Yes.

03:20:16PM 7 Q. And how is it that you remember that?

03:20:20PM 8 A. Because I thought he was supposed to be videoed, and  
03:20:25PM 9 then it was decided he wasn't going to be able to, and so  
03:20:28PM 10 the paper declaration was the alternative.

03:20:33PM 11 Q. Do you recall seeing a videographer in the room the  
03:20:41PM 12 day that the declaration was signed? Not necessarily at  
03:20:46PM 13 the time it was signed, but that day that it was signed,  
03:20:48PM 14 was there a videographer in the room?

03:20:50PM 15 A. Not that I know of.

03:20:52PM 16 Q. Does your cellphone have videotaping capabilities?

03:21:04PM 17 A. Yes.

03:21:04PM 18 Q. Did you videotape the signing of that declaration?

03:21:10PM 19 A. No.

03:21:10PM 20 Q. Do you know whether Mrs. Gloria Varney -- whether her  
03:21:17PM 21 cellphone has videotaping capabilities?

03:21:19PM 22 A. I don't know if hers does or not.

03:21:22PM 23 Q. Did you see her videotape the signing?

03:21:26PM 24 A. No, I didn't.

03:21:28PM 25 Q. Do you know whether Mr. Adams' cellphone has

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03:21:38PM 1 videotaping capabilities?

03:21:40PM 2 A. I don't know.

03:21:41PM 3 Q. Did you witness anyone in the room videotape the  
03:21:45PM 4 signing of this declaration?

03:21:47PM 5 A. I don't recall that, no.

03:21:49PM 6 Q. Before we started talking about the videotaping we  
03:21:54PM 7 were talking about the order of the people entering the  
03:21:57PM 8 room. You told us the father got there maybe first, or  
03:22:04PM 9 was it Adams?

03:22:05PM 10 A. Well, I think Ben was there already before the father  
03:22:11PM 11 got there.

03:22:12PM 12 Q. And why wasn't the declaration signed at that point?

03:22:21PM 13 A. The notary wasn't there.

03:22:22PM 14 Q. Okay. And so when we spoke with the notary -- The  
03:22:30PM 15 notary told us he was asked to wait outside the room for  
03:22:34PM 16 about a half hour. What was happening inside the room  
03:22:40PM 17 with your father during that half hour while the notary  
03:22:43PM 18 was waiting outside?

03:22:45PM 19 A. I thought that was when the nurse was in there with  
03:22:49PM 20 dad, giving him -- taking care of whatever needed to  
03:22:53PM 21 happen. I don't know who was in the room. That's what my  
03:22:59PM 22 guess is, what was going on, because I was outside also  
03:23:03PM 23 during that time.

03:23:04PM 24 Q. You were outside --

03:23:06PM 25 A. The room.

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03:23:07PM 1 Q. -- with the notary?

03:23:08PM 2 A. Um-hum. Not right there with him. He was out there,  
03:23:13PM 3 and I said, "Thank you for coming." And we just kind of  
03:23:17PM 4 waited in the hall.

03:23:18PM 5 Q. How long were you outside the room?

03:23:26PM 6 A. I couldn't even guess. I don't know.

03:23:28PM 7 Q. And was Mr. Adams in the room or was he waiting  
03:23:33PM 8 outside with you as well?

03:23:34PM 9 A. I don't know.

03:23:35PM 10 Q. Do you know whether you were asked to leave the  
03:23:41PM 11 room -- well, you mentioned because the nurse was --

03:23:44PM 12 A. That's what I thought, was taking care of dad, and I  
03:23:48PM 13 just stepped out because I knew I wasn't supposed to be in  
03:23:52PM 14 there.

03:24:04PM 15 Q. When is the first time that you saw the piece of  
03:24:11PM 16 paper on that day?

03:24:12PM 17 A. I think when it was given to dad.

03:24:17PM 18 Q. And do you remember whether it was taken out of a  
03:24:25PM 19 bag, where did it come from?

03:24:26PM 20 A. I do not know any of those details.

03:24:29PM 21 Q. Do you know whether Mrs. Gloria Varney participated  
03:24:40PM 22 in any way in the drafting of that declaration?

03:24:43PM 23 A. I do not know that.

03:24:44PM 24 Q. Have you ever had a conversation with Mrs. Gloria  
03:24:48PM 25 Varney about that declaration?

03:24:50PM 1  
03:24:51PM 2  
03:25:06PM 3  
03:25:09PM 4  
03:25:19PM 5  
03:25:29PM 6  
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03:25:35PM 9  
03:25:36PM 10  
03:25:38PM 11  
03:25:40PM 12  
03:25:42PM 13  
03:25:44PM 14  
03:25:49PM 15  
03:25:54PM 16  
03:26:14PM 17  
03:26:17PM 18  
03:26:20PM 19  
03:26:28PM 20  
03:26:36PM 21  
03:26:42PM 22  
03:26:49PM 23  
03:26:51PM 24  
03:26:59PM 25

A. No.

Q. What did you do to prepare to come here today?

A. I prayed.

Q. Without going into the subject matter at this point, did you meet with any -- either Mr. Adams or somebody from his office before coming here today?

A. Yes.

Q. And on how many occasions did you meet with them?

A. Just one.

Q. And when was that?

A. It was last evening.

Q. Last evening?

A. Um-hum.

Q. Prior to meeting with them in person last evening, when was the last time that you spoke with anyone from the Dean Omar law firm, or any of your father's attorneys?

A. It would have been -- Today is Monday. It would have been last week, to let me know I needed to be here.

Q. Before last week, when was the last time you spoke with anyone from your attorney's -- from your father's law firm, the attorneys representing him?

A. It has been a while. I can't give a time. It has been a period of time.

Q. You mentioned that when your father made that statement of, "I am coherent. I know what I am doing," in

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03:27:04PM 1 your mind that is kind of like the last words you recall  
03:27:07PM 2 him saying, correct?

03:27:08PM 3 A. Truly, yes.

03:27:09PM 4 Q. And to how many people have you relayed those last  
03:27:16PM 5 words that he said?

03:27:18PM 6 A. To three, my sisters.

03:27:22PM 7 Q. To your sisters?

03:27:23PM 8 A. Um-hum.

03:27:25PM 9 Q. And when did you tell your sisters that those were  
03:27:28PM 10 his last words?

03:27:31PM 11 A. Probably that week that dad passed, because I was  
03:27:34PM 12 relaying not his words so much, but just what had  
03:27:38PM 13 happened.

03:27:39PM 14 Q. Did you tell anybody else about those statements?

03:27:43PM 15 A. I would have told Mr. Adams.

03:27:47PM 16 MR. ADAMS: Your Honor, I would object, based on  
03:27:49PM 17 attorney-client privilege.

03:27:53PM 18 MR. VEGA: Your Honor --

03:27:55PM 19 THE COURT: Is this your client?

03:27:57PM 20 MR. ADAMS: Yes.

03:28:01PM 21 MR. VEGA: Your Honor, the statement was made  
03:28:02PM 22 inside of a hospital room with a priest and a notary.

03:28:08PM 23 THE COURT: I don't know that. The objection is  
03:28:12PM 24 sustained, and the answer stricken. You need foundation  
03:28:24PM 25 if you can get by that objection.

03:28:27PM 1 By Mr. Vega:

03:28:30PM 2 Q. You told us that about a week after your father  
03:28:34PM 3 uttered those words, "I am coherent. I know what I am  
03:28:38PM 4 signing," you said that you relayed that to your sisters?

5 A. (Nodding.)

03:28:43PM 6 Q. You are nodding your head up and down. We need a  
03:28:46PM 7 verbal response.

03:28:46PM 8 A. Yes. Yes.

03:28:48PM 9 Q. When is the next time that you said that statement?

03:28:53PM 10 A. Today.

03:29:00PM 11 Q. And I'm not talking about when you said it to me, I  
03:29:05PM 12 am saying -- or when you said it here in open court.

03:29:09PM 13 Before saying it here in open court, since February  
03:29:18PM 14 of 2018, until before you came into this court, when did  
03:29:20PM 15 you say that statement to anyone? When?

03:29:25PM 16 MR. ADAMS: I have to object, your Honor, to the  
03:29:28PM 17 extent it calls for attorney-client privilege.

03:29:30PM 18 THE COURT: The objection is sustained.

03:29:36PM 19 MR. ADAMS: Thank you.

03:29:37PM 20 By Mr. Vega:

03:29:38PM 21 Q. Did you ever tell Ms. Gloria Varney -- did you ever  
03:29:43PM 22 have a conversation, about those words, being surprised  
03:29:46PM 23 how your father so vibrantly said those words? Did you  
03:29:52PM 24 ever have a conversation with her about that?

03:29:53PM 25 A. Probably not.

03:29:55PM 1 Q. Did you ever hear your father talk about the specific  
03:30:25PM 2 type of equipment which he believed he worked on or around  
03:30:28PM 3 in the Navy, in the shipyards?

03:30:31PM 4 A. Yes.

03:30:34PM 5 Q. And when was that?

03:30:36PM 6 A. It was when I went to visit him in December.

03:30:44PM 7 Q. And who was present when you were having this  
03:30:48PM 8 conversation about the types of equipment?

03:30:50PM 9 A. It would have been me and dad, and Gloria was  
03:30:54PM 10 probably there.

03:30:55PM 11 Q. As you sit here today, can you tell us what pieces of  
03:31:00PM 12 equipment those are?

03:31:01PM 13 A. I just remember pipes and things that he had to turn.

03:31:15PM 14 Q. Is it fair to say that you never heard your father  
03:31:21PM 15 speak the words that were on that declaration on either  
03:31:28PM 16 the day it was signed or the day before?

03:31:35PM 17 A. You're asking me if I heard my dad like read or make  
03:31:39PM 18 the statements that were on his -- the day before or the  
03:31:44PM 19 day that he signed?

03:31:46PM 20 Q. Yes.

03:31:48PM 21 A. I don't think I did.

03:31:50PM 22 Q. And you would remember that?

03:31:53PM 23 A. I am trying to remember so much. I am trying to be  
03:31:58PM 24 as accurate as I can.

03:31:59PM 25 Q. Just bear with me. My computer locked me out. In

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03:32:31PM 1 the month of December you had a conversation with  
03:32:35PM 2 Mr. Adams; is that correct?

03:32:37PM 3 A. Yes.

03:32:38PM 4 Q. And what about in the month of January?

03:32:43PM 5 A. Sure. Yes.

03:32:44PM 6 Q. And about how many conversations did you have with  
03:32:48PM 7 Mr. Adams?

03:32:48PM 8 A. I couldn't even guess. I don't know.

03:32:51PM 9 Q. When you would have these conversations with  
03:32:53PM 10 Mr. Adams, were they all in person or were some of them on  
03:32:57PM 11 the phone?

03:32:57PM 12 A. Is it okay for me to answer?

03:33:05PM 13 THE COURT: Ms. Brown is looking for advice from  
03:33:08PM 14 me. I don't know. Just within the scope of the  
03:33:17PM 15 privilege. The question, it seems to me, is not --

03:33:22PM 16 MR. VEGA: Content.

03:33:23PM 17 THE COURT: -- whether anybody was there when she  
03:33:27PM 18 talked to Mr. Adams about this situation. That would  
03:33:32PM 19 defeat the privilege. What's the next question?

03:33:41PM 20 By Mr. Vega:

03:33:42PM 21 Q. Other than Mr. Adams, did you communicate with anyone  
03:33:45PM 22 else from the Dean Omar firm or -- I believe they have  
03:33:49PM 23 co-counsel, I don't know how to pronounce the name,  
03:33:52PM 24 Couture or something like that?

03:33:54PM 25 A. Only when they made the initial call and spoke with

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03:33:58PM 1 whoever answered the phone.

03:33:59PM 2 Q. Was that a call that was made to the Couture firm or  
03:34:05PM 3 was that to the Dean Omar firm?

03:34:09PM 4 A. Dean Omar.

03:34:10PM 5 Q. So there was an initial intake, and then after  
03:34:13PM 6 that was when -- all of your communications after that  
03:34:15PM 7 were just with one person?

03:34:16PM 8 A. Yes.

03:34:16PM 9 Q. Were you ever present when Mr. Adams was speaking  
03:34:42PM 10 with your father and there was someone other than your  
03:34:46PM 11 mother, Mrs. Gloria Varney, present?

03:34:51PM 12 A. No. It would have just been dad, Gloria, Mr. Adams,  
03:34:56PM 13 and then if I was there.

03:34:59PM 14 Q. How much time elapsed on February 7th -- Let me  
03:35:11PM 15 just -- Let me strike that and let's start anew.

03:35:17PM 16 You told us that Mr. Parris, the notary, walks into  
03:35:25PM 17 the room, and he says, "Is he able to sign?" Are those  
03:35:31PM 18 his words?

03:35:31PM 19 A. I believe it was really something very close to that,  
03:35:34PM 20 if those weren't the exact words, "Is he able to sign?"  
03:35:38PM 21 Because dad was just there like he was asleep.

03:35:42PM 22 Q. And when those words are uttered, when Mr. Parris  
03:35:45PM 23 asked the question, is that when the declaration appears?

03:35:50PM 24 A. No. That's when dad sat up and said -- said what he  
03:35:59PM 25 said, that he was clear and he knew what he was signing.

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03:36:03PM 1 And I don't know how long it was before -- you know, I  
03:36:07PM 2 don't know if there was more conversation and then dad was  
03:36:10PM 3 given that. I don't know. I mean, I don't think he was  
03:36:14PM 4 there for a whole long time, the notary.

03:36:16PM 5 Q. That's what I am trying to zoom in on now. And I  
03:36:21PM 6 want to expand that period of time. So when Mr. Parris  
03:36:26PM 7 walks in and asks that question, is that when the  
03:36:35PM 8 declaration appears?

03:36:39PM 9 A. Dad responded, and then it would have been shortly  
03:36:43PM 10 after that that he was given the declaration.

03:36:45PM 11 Q. Okay. So Mr. Parris walks in, asks the question,  
03:36:50PM 12 your father responds, "I am coherent. I know what I am  
03:36:53PM 13 signing," and then at that point the declaration is  
03:36:57PM 14 produced?

03:36:57PM 15 A. I don't know that it was just immediate like that,  
03:37:01PM 16 but, yes, shortly after that, or right after that,  
03:37:05PM 17 sometime after that is when, yes.

03:37:08PM 18 Q. And then at what point in relation to the handing him  
03:37:14PM 19 the document does your father ask for his glasses?

03:37:20PM 20 A. I don't know. I think dad had -- he must have had it  
03:37:26PM 21 in his hands and then said, "I need my glasses," or,  
03:37:29PM 22 "Where are my glasses?" or whatever it was. Probably  
03:37:34PM 23 would have been just immediate after that.

03:37:37PM 24 Q. And then do you have a visual recollection of your  
03:37:41PM 25 father reaching for the glasses or did someone put the

03:37:45PM 1 glasses on his face?

03:37:46PM 2 A. Actually, I am thinking about that, and I don't know  
03:37:50PM 3 if they went on him -- if he actually put them on or not.  
03:37:54PM 4 I don't know. I am trying to remember it. I am trying to  
03:37:58PM 5 visualize it, and I don't know if he actually did get his  
03:38:03PM 6 glasses or not.

03:38:03PM 7 Q. But someone handed him the glasses?

03:38:06PM 8 A. I am trying to remember, but I can't. I don't know.

03:38:10PM 9 Q. This was roughly at what time?

03:38:19PM 10 A. When the notary got there. It would have been around  
03:38:24PM 11 that 11:00. I don't know if it was a little bit before or  
03:38:28PM 12 after.

03:38:30PM 13 Q. Do you recall whether your father was able to eat  
03:38:34PM 14 food at that time?

03:38:36PM 15 A. No, dad couldn't eat food.

03:38:39PM 16 Q. He had a tube, right? And he essentially had been  
03:38:44PM 17 laying down, essentially sleeping for the last couple of  
03:38:46PM 18 days?

03:38:46PM 19 A. Right. But in that recline. Not flat, but just kind  
03:38:50PM 20 of reclined.

03:38:51PM 21 Q. So the hospital tray, where they sometimes give you  
03:38:55PM 22 the food, and it is that rolling cart, there really was no  
03:39:01PM 23 reason for using that tray with your father because he  
03:39:05PM 24 wasn't on solid foods any longer?

03:39:08PM 25 A. We still had that tray there, and we had things on

03:39:12PM 1 it. We had the washcloth, that sort of thing, that little  
03:39:15PM 2 plastic cup like -- bowl thing was there. We had water.  
03:39:21PM 3 We were always just kind of washing him off. You had to  
03:39:26PM 4 pat his skin to try to keep it a little bit moist.

03:39:31PM 5 Q. Did you hear -- while you were in that room, did you  
03:39:35PM 6 hear anyone read the declaration to your father?

03:39:45PM 7 A. I don't remember that.

03:39:47PM 8 Q. Do you -- And so if you don't remember that, you  
03:39:55PM 9 also don't remember to the extent -- So the declaration  
03:40:01PM 10 is numbered -- it has numbers -- Do you remember whether  
03:40:05PM 11 the declaration is numbered at all?

03:40:06PM 12 A. That is something I didn't pay attention to.

03:40:10PM 13 Q. So as you sit here today, you can't tell us that you  
03:40:24PM 14 heard someone read off Paragraph 1, and then get some type  
03:40:33PM 15 of acknowledgment that your father heard Paragraph 1 and  
03:40:39PM 16 believes Paragraph 1 to be accurate and true, correct?

03:40:42PM 17 A. I don't remember hearing that.

03:40:44PM 18 Q. And similarly, you didn't hear anyone go through --  
03:40:48PM 19 And so if that declaration has seven paragraphs, you  
03:40:52PM 20 didn't hear someone go through each of the paragraphs and  
03:40:54PM 21 get your father's acknowledgment that that paragraph was  
03:40:59PM 22 true and accurate, correct?

03:41:01PM 23 A. I don't remember that.

03:41:03PM 24 Q. And that's something you would have remembered,  
03:41:07PM 25 correct?



03:41:07PM 1 A. Well, I am having a tough time remembering a lot of  
03:41:13PM 2 things, so I don't know. It seems like there are things I  
03:41:16PM 3 should remember that I just plain don't.

03:41:18PM 4 Q. And as you sit here right now, what is your best  
03:41:23PM 5 estimate for how long it took from the time your father  
03:41:30PM 6 said, "I am coherent. I know what I am signing," until he  
03:41:34PM 7 actually signed the declaration?

03:41:37PM 8 A. I think it happened in a reasonable -- a short,  
03:41:43PM 9 reasonable period of time.

03:41:44PM 10 Q. What do you mean by "a short, reasonable period of  
03:41:46PM 11 time"?

03:41:46PM 12 A. I knew you were going to ask me that. I don't know.  
03:41:49PM 13 We weren't waiting for half an hour for him to sign. It  
03:41:53PM 14 was like he was given the paper and he signed it.

03:41:59PM 15 Q. Like within five seconds?

03:42:01PM 16 A. No, it wouldn't have been that short, because dad  
03:42:06PM 17 couldn't move that fast. Was it within 15 minutes?  
03:42:10PM 18 Probably. Was it longer than that? I am only guessing.  
03:42:17PM 19 I am throwing 15 minutes out there as a guess. I just was  
03:42:22PM 20 not paying attention to these sorts of details.

03:42:24PM 21 Q. And you understand that -- You know, you just said  
03:42:26PM 22 15 minutes, but that would be inconsistent with what  
03:42:29PM 23 everybody else has testified about how long it took your  
03:42:32PM 24 father to sign this document, correct?

03:42:34PM 25 MR. ADAMS: I am just going to object at this

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03:42:36PM 1 point, your Honor. It is argumentative. It lacks  
03:42:39PM 2 foundation.

03:42:39PM 3 THE COURT: Sustained.

03:42:57PM 4 By Mr. Vega:

03:42:58PM 5 Q. Do you recall whether -- And I am about to wrap up.  
03:43:03PM 6 You mentioned -- I asked you about whether anybody  
03:43:05PM 7 videotaped. Did anybody take any pictures during the day  
03:43:09PM 8 of the signing?

03:43:10PM 9 A. I am unaware if anyone took pictures.

03:43:18PM 10 MR. VEGA: Thank you, Mrs. Brown. Those are all  
03:43:21PM 11 my questions right now.

03:43:22PM 12 THE COURT: Other cross, counsel? Redirect?

03:43:31PM 13 MR. ADAMS: Yeah. Your Honor, may we have  
03:43:44PM 14 permission to publish an image of the notary, Steven  
03:43:49PM 15 Parris?

03:43:50PM 16 THE COURT: An image of the notary?

03:43:53PM 17 MR. ADAMS: From the video that was played.

03:43:56PM 18 THE COURT: Yeah.

03:44:00PM 19 REDIRECT EXAMINATION

03:44:01PM 20 By Mr. Adams:

03:44:02PM 21 Q. Ms. Brown, you were asked some questions about  
03:44:04PM 22 whether or not you were actually present at the time that  
03:44:08PM 23 your father signed this declaration. Do you remember  
03:44:10PM 24 that?

03:44:10PM 25 A. Yes.

03:44:11PM 1 Q. Have you ever seen this man before?

03:44:12PM 2 A. Um-hum. Yes, I have.

03:44:14PM 3 Q. Where do you recognize him from?

03:44:16PM 4 A. He was in the hospital hallway, and then in the room  
03:44:22PM 5 with dad.

03:44:24PM 6 Q. And which individual was he in the room with your  
03:44:28PM 7 dad? Did he have a title?

03:44:29PM 8 A. Yes, he is the notary. This guy is the notary.

03:44:33PM 9 Q. Since February 7th, 2018, have you had any  
03:44:38PM 10 interaction with a notary?

03:44:42PM 11 A. I became a licensed notary, but I haven't had any  
03:44:46PM 12 interaction with one.

03:44:48PM 13 Q. Have you seen this person who we have displayed since  
03:44:53PM 14 February 7th, 2018?

03:44:54PM 15 A. No, I have not.

03:44:55PM 16 Q. You were asked a number of questions about specific  
03:45:00PM 17 details of communications you and Gloria had with your  
03:45:03PM 18 father during certain time periods. Do you recall that?

03:45:06PM 19 A. Um-hum. Yes.

03:45:07PM 20 Q. Focusing in on February 7th, 2018, until February 8,  
03:45:18PM 21 2018, when your father passed, so the 7th and 8th. After  
03:45:22PM 22 your father signed the declaration. So that's the time  
03:45:25PM 23 period I am going to ask you about, okay?

03:45:28PM 24 A. Um-hum.

03:45:28PM 25 Q. Okay. Was Gloria speaking to your father?

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03:45:32PM 1 A. Yes. She would talk to him in his ear and rub his  
03:45:40PM 2 face. She continued that until he passed.

03:45:44PM 3 MR. VEGA: Your Honor, I have an objection. This  
03:45:47PM 4 goes beyond the scope of my cross. I did not inquire  
03:45:51PM 5 about the time period from signing to death. And that's  
03:45:55PM 6 the time period that he is discussing now.

03:45:58PM 7 THE COURT: Overruled.

03:46:00PM 8 By Mr. Adams:

03:46:03PM 9 Q. Was there any reaction from your father when Gloria  
03:46:06PM 10 spoke to him?

03:46:08PM 11 A. No.

03:46:10PM 12 Q. When you spoke -- I'm sorry. Go ahead.

03:46:16PM 13 A. No, not that I can remember.

03:46:19PM 14 Q. Was there a reaction from your father -- Let me take  
03:46:27PM 15 a step back. Sorry.

03:46:28PM 16 Was there a time when your father couldn't respond  
03:46:32PM 17 and Gloria was speaking to him, like he didn't say words  
03:46:37PM 18 in response?

03:46:38PM 19 A. Yes.

03:46:39PM 20 Q. Did he do something else in response to Gloria's  
03:46:47PM 21 words?

03:46:47PM 22 A. Cry.

03:46:48PM 23 Q. When was that?

03:46:50PM 24 A. I don't remember the time. I just know that  
03:47:01PM 25 sometimes the tears would come out of his face. I don't

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03:47:03PM 1 know the date, if it was before or after. I just cannot  
03:47:08PM 2 remember.

03:47:09PM 3 MR. ADAMS: Those are all my questions. Thank  
03:47:11PM 4 you.

03:47:14PM 5 RECROSS-EXAMINATION

03:47:16PM 6 By Mr. Vega:

03:47:20PM 7 Q. You were just shown a photo of Mr. Parris, correct?

03:47:25PM 8 A. Yes.

03:47:25PM 9 Q. And that's the same image that you saw on the screen  
03:47:30PM 10 before we broke for lunch, correct?

03:47:32PM 11 A. Yes.

03:47:32PM 12 Q. And that's the same image that you saw right after we  
03:47:36PM 13 came back from lunch, correct?

03:47:37PM 14 A. Yes.

03:47:40PM 15 MR. VEGA: No further questions.

03:47:42PM 16 THE COURT: Thank you, Ms. Brown.

03:48:04PM 17 MR. ADAMS: Your Honor, we don't have any more  
03:48:06PM 18 live witnesses for the plaintiffs' case. We have another  
03:48:12PM 19 declaration we would like to read and publish. Although,  
03:48:15PM 20 if the Court simply wants to read it on its own, we are  
03:48:19PM 21 amenable to that.

03:48:20PM 22 And we also have -- we also still want to offer the  
03:48:27PM 23 deposition testimony of Dr. Sharma, which I understand the  
03:48:31PM 24 Court is going to read on its own.

03:48:32PM 25 And we also want to offer the deposition testimony of

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03:48:38PM 1 Maria Gloria Varney, which the Court may want to read on  
03:48:43PM 2 its own. I don't know.

03:48:45PM 3 We also want to offer into evidence -- I am treating  
03:48:48PM 4 this like a bench trial.

03:48:50PM 5 THE COURT: That's what it is.

03:48:52PM 6 MR. ADAMS: I thought so. We would like to offer  
03:48:54PM 7 into evidence the exhibits, which are medical records to  
03:49:00PM 8 the deposition of Dr. Sharma. They are the nursing notes,  
03:49:03PM 9 Dr. Sharma's medical records, and some other medical  
03:49:07PM 10 records for Don Varney.

03:49:10PM 11 THE COURT: Mark them.

03:49:12PM 12 MR. ADAMS: That's all we have. With that, we  
03:49:14PM 13 rest.

03:49:16PM 14 THE COURT: Here I am. Mark your exhibits and  
03:49:20PM 15 offer them if they are self-identified, however you are  
03:49:27PM 16 going to do it.

03:49:28PM 17 MR. ADAMS: I have a little cheat sheet. I just  
03:49:31PM 18 have to bring it up. Sorry, your Honor. I had a cheat  
03:51:32PM 19 sheet with an exhibit number for Dr. Sharma's deposition  
03:51:38PM 20 corresponding to the trial exhibit number, and I have  
03:51:41PM 21 misplaced it. Can we rest subject to offering that? As  
03:51:46PM 22 soon as I find it -- I'm sorry. I just had it.

03:51:51PM 23 THE COURT: Well, there are a number of things  
03:51:55PM 24 that are part of your case that I don't have here.

03:52:04PM 25 MR. ADAMS: We will offer into evidence Exhibit

03:52:06PM 1 No. 1, which is the declaration of Donald Varney.

03:52:09PM 2 THE COURT: The declaration of whom?

03:52:12PM 3 MR. ADAMS: Donald Varney.

03:52:17PM 4 MR. VEGA: Deposition?

03:52:19PM 5 MR. ADAMS: Declaration. The declaration of  
03:52:22PM 6 Donald Varney as Exhibit No. 1.

03:52:24PM 7 THE COURT: Have you marked it and handed it to  
03:52:26PM 8 the clerk?

03:52:27PM 9 MR. ADAMS: We exchanged a binder this morning.

03:52:37PM 10 THE COURT: Your exhibits are in here?

03:52:42PM 11 MR. ADAMS: Yes.

03:52:44PM 12 THE COURT: Here you go, Mr. Exhibit Man.

03:52:49PM 13 MR. ADAMS: We are not offering --

03:52:51PM 14 MR. VEGA: This is the first time we have seen  
03:52:53PM 15 that document.

03:52:54PM 16 MR. ADAMS: We have exchanged exhibits. They  
03:52:56PM 17 have every single exhibit.

03:52:59PM 18 THE COURT: You have to take them one at a time  
03:53:01PM 19 and tell me what they are. Number 1 is apparently the  
03:53:04PM 20 declaration we are here about.

03:53:06PM 21 MR. ADAMS: Correct. We would offer that into  
03:53:08PM 22 evidence.

03:53:08PM 23 THE COURT: Is there any objection to Number 1?

03:53:12PM 24 MS. JOHNSON: It is hearsay. There is no  
03:53:15PM 25 applicable exception.

03:53:17PM 1 THE COURT: It may be admitted for purposes of  
03:53:20PM 2 this hearing only at this point.

03:53:23PM 3 (Exhibit No. 1 admitted.)

03:53:23PM 4 MR. ADAMS: We would mark as Exhibit No. 2 the  
03:53:27PM 5 declaration of Father Schimmel, and offer that into  
03:53:30PM 6 evidence.

03:53:31PM 7 MS. JOHNSON: Same objection.

03:53:32PM 8 THE COURT: Any objection to that other than the  
03:53:38PM 9 objections already made?

03:53:40PM 10 MS. JOHNSON: Those already made.

03:53:41PM 11 THE COURT: It may be admitted, also for this  
03:53:44PM 12 hearing only.

03:53:45PM 13 (Exhibit No. 2 admitted.)

03:53:45PM 14 MR. ADAMS: We would mark and seek to admit the  
03:53:47PM 15 declaration of John Kercheval. That's Exhibit 3. We  
03:53:50PM 16 would offer that into evidence at this time.

03:53:58PM 17 MS. JOHNSON: The same objection, it is an  
03:54:00PM 18 out-of-court statement offered for the truth.

03:54:03PM 19 THE COURT: I don't hear you.

03:54:04PM 20 MS. JOHNSON: Same objections.

03:54:08PM 21 THE COURT: I think it may be admitted for this  
03:54:20PM 22 hearing only.

03:54:27PM 23 (Exhibit No. 3 admitted.)

03:54:27PM 24 MR. VEGA: And just because we don't have that  
03:54:29PM 25 here, are you doing -- is the declaration of

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03:54:33PM 1 Dr. Kercheval -- I do not have a copy here. Does that  
03:54:37PM 2 contain his medical -- progress notes, as well?

03:54:41PM 3 MS. JOHNSON: No.

03:54:46PM 4 MR. VEGA: I am also going to object, just on  
03:54:48PM 5 completeness, because I think it should have  
03:54:53PM 6 Dr. Kercheval's progress notes, as well, in particular  
03:54:57PM 7 where he says that plaintiff is -- that Mr. Varney is  
03:55:02PM 8 obtunded.

03:55:03PM 9 MR. ADAMS: We have no objection to any of the  
03:55:05PM 10 medical records coming into evidence. No objection.

03:55:12PM 11 THE COURT: He objects, and you don't, and I  
03:55:15PM 12 don't know where the stuff is. You know, like get me the  
03:55:19PM 13 stuff and mark it.

03:55:21PM 14 MS. JOHNSON: I think it is being marked.

03:55:26PM 15 THE COURT: Pardon?

03:55:30PM 16 THE CLERK: I have the copy right here.

03:55:32PM 17 THE COURT: Does that include what counsel asked  
03:55:34PM 18 about? No? So where are those documents?

03:55:39PM 19 MS. JOHNSON: We do have copies of those for your  
03:55:42PM 20 Honor.

03:55:42PM 21 THE COURT: I assume if you want them in, then  
03:55:44PM 22 you will offer them when it is your turn.

03:55:46PM 23 MS. JOHNSON: Absolutely.

03:55:47PM 24 THE COURT: Okay. The declaration of  
03:55:54PM 25 Dr. Kercheval may be admitted for purposes of this hearing

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03:55:57PM 1 only. What else?

03:56:07PM 2 MR. ADAMS: We are offering Exhibit 12 into  
03:56:10PM 3 evidence, which are the exhibits to the deposition of  
03:56:13PM 4 Dr. Sharma. And it's 12-001 to 12-082.

03:56:35PM 5 THE COURT: Any objection to those documents?

03:56:39PM 6 MS. WEGLARZ: I would like some clarification.  
03:56:41PM 7 Was that a particular exhibit to the deposition?

03:56:44PM 8 MR. ADAMS: Yes. It is Exhibits 1 through 8 to  
03:56:51PM 9 the deposition.

03:57:03PM 10 MS. WEGLARZ: My only objection would be there  
03:57:05PM 11 are some nursing notes that Dr. Sharma does say are not  
03:57:08PM 12 his notes, and he does not vouch for them. So if they are  
03:57:13PM 13 offered for the truth of the matters asserted therein,  
03:57:19PM 14 with regards to Mr. Varney's condition, then defendants  
03:57:22PM 15 would object to it on that grounds. If they are offered  
03:57:25PM 16 for another purpose -- I don't know what that purpose  
03:57:27PM 17 would be. I guess that's something that plaintiffs would  
03:57:33PM 18 have to propose, what the purpose of those nursing records  
03:57:39PM 19 are.

03:57:39PM 20 THE COURT: Those are parts of Exhibit 12?

03:57:43PM 21 MS. WEGLARZ: I believe it is Exhibit -- that  
03:58:14PM 22 would be Exhibit 3. Of the exhibits that are part of this  
03:58:38PM 23 one block of exhibits, it is actually separate individual  
03:58:43PM 24 types of documents.

03:58:45PM 25 MR. ADAMS: Which one do you have the objection

03:58:47PM 1 to?

03:58:49PM 2 MS. WEGLARZ: We will object to -- Well, first,  
03:58:52PM 3 the notice of deposition. I don't know why that would be  
03:58:54PM 4 submitted to your Honor right now.

03:58:56PM 5 MR. ADAMS: Your Honor, I can -- I hoped we  
03:59:00PM 6 wouldn't have to do this, but I will offer just portions  
03:59:04PM 7 of Exhibit 12. And they are Bates numbered. Maybe that  
03:59:09PM 8 will fix this. Okay?

03:59:13PM 9 THE COURT: What are you offering here?

03:59:15PM 10 MR. ADAMS: We are offering Trial Exhibit 12-019  
03:59:24PM 11 to 12-027. I am going to tell you what it is. Don't  
03:59:32PM 12 worry. That is Exhibit 3 to Dr. Sharma's deposition.

03:59:40PM 13 MS. WEGLARZ: The defendants object to Exhibit 3  
03:59:44PM 14 to the deposition, as these are not Dr. Sharma's notes.  
03:59:47PM 15 These are notes of nurses. In his deposition he says he  
03:59:51PM 16 does not vouch for the nurses' notes. Again, if they are  
03:59:57PM 17 offered for the truth of what is asserted in the records,  
04:00:00PM 18 defendants object.

04:00:02PM 19 MR. ADAMS: We deposed the 30(b)(6) witness who  
04:00:05PM 20 is responsible for the records at Abrazo West Hospital,  
04:00:12PM 21 and they said these are true and correct copies, authentic  
04:00:15PM 22 business records for Donald Varney. So they fall under  
04:00:19PM 23 the business records exception to the hearsay rule, and  
04:00:20PM 24 they come in for the truth.

04:00:24PM 25 MS. WEGLARZ: I don't think they do. So we still

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04:00:27PM 1 object that they are hearsay.

04:00:28PM 2 THE COURT: I think they may be admitted.

03:59:20PM 3 (Exhibit Nos. 12-019 to 12-027 admitted.)

04:00:33PM 4 MR. ADAMS: We will offer Trial Exhibit 12-028 to  
04:00:42PM 5 12-032. These are additional records from Abrazo West  
04:00:50PM 6 campus that were marked as Exhibit 4 to Dr. Sharma's  
04:00:55PM 7 deposition.

04:00:58PM 8 MS. WEGLARZ: Same objection.

04:00:59PM 9 THE COURT: I think they may be admitted.

04:00:39PM 10 (Exhibit Nos. 12-028 to 12-032 admitted.)

04:01:02PM 11 MR. ADAMS: We offer Trial Exhibit 12-033 through  
04:01:06PM 12 12-059. Those are additional medical records of Donald  
04:01:12PM 13 Varney's, and they were marked as Exhibit 5 to  
04:01:16PM 14 Dr. Sharma's deposition.

04:01:19PM 15 MS. WEGLARZ: No objection.

04:01:20PM 16 THE COURT: They may be admitted.

04:01:04PM 17 (Exhibit Nos. 12-033 through 12-059 admitted.)

04:01:21PM 18 MR. ADAMS: We offer Trial Exhibit 12-066 through  
04:01:25PM 19 12-074. Those were additional medical records of Don  
04:01:30PM 20 Varney's from Abrazo West Hospital, and they were  
04:01:35PM 21 Exhibit 7 to Dr. Sharma's deposition.

04:01:39PM 22 MS. WEGLARZ: Same objection with regard to the  
04:01:42PM 23 nurse's notes.

04:01:42PM 24 THE COURT: May be admitted.

04:01:23PM 25 (Exhibit Nos. 12-066 through 12-074 admitted.)

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04:01:44PM 1 MR. ADAMS: Your Honor, the last one is 12-075  
04:01:48PM 2 through 12-082, which are additional medical records of  
04:01:54PM 3 Don Varney's from Abrazo West Hospital, that were marked  
04:01:57PM 4 as Exhibit 8 to Dr. Sharma's deposition.

04:02:01PM 5 MS. WEGLARZ: Same objection.

04:02:03PM 6 THE COURT: They may also be admitted.

04:01:46PM 7 (Exhibit Nos. 12-075 through 12-082 admitted.)

04:02:06PM 8 MR. ADAMS: Your Honor, plaintiffs rest.

04:02:13PM 9 THE COURT: Now, what about the deposition of  
04:02:15PM 10 Ms. Varney?

04:02:17PM 11 MR. ADAMS: We would like to read that, but I  
04:02:19PM 12 understand the Court is going to read that --

04:02:22PM 13 THE COURT: I can read it if I have it. Where is  
04:02:25PM 14 it?

04:02:27PM 15 MR. ADAMS: It is in that blue binder in front of  
04:02:30PM 16 your Honor. There is a tab that will say, I think,  
04:02:38PM 17 Varney. It says Maria Varney, because that's Gloria's  
04:02:41PM 18 official name, but she goes by Gloria.

04:02:47PM 19 THE COURT: Any objection to Ms. Varney's  
04:02:50PM 20 deposition?

04:02:53PM 21 MR. CRAIG: Your Honor, we have the same issue  
04:02:54PM 22 with Ms. Varney's deposition as we did with Dr. Sharma's,  
04:02:59PM 23 in that the defendants made objections to particular  
04:03:01PM 24 questions on the transcript that we were provided. The  
04:03:06PM 25 version that we were given this morning does not have

those objections included. So we would object to the use without having the ones indicating our objections.

MR. ADAMS: That was an error on our part, your Honor. We indicated -- So that will need to be fixed. I'm sorry. We were working late last night, and we marked in red where they objected, but we didn't put the legal objection on the transcript. We put the name of the defendant. That was just a mistake. I am open to a solution if defendants have one. We can just submit a new marked transcript to the Court, you know, tomorrow or something. Or, your Honor, I can stipulate they can have every objection they want, and the Court can read it and exclude what it wants. That's fine with me, too.

THE COURT: You have 117 pages in this deposition. I can't imagine on the narrow issues presented what it takes 117 pages of me to read in order to resolve the narrow issues here. The same thing is true of the other deposition we talked about this morning.

I don't want to trample on anybody's rights here in all this, but, man, we are wasting a lot of time with this. It would be easier if you let me read the depositions and give them the credibility they deserve.

MS. JOHNSON: We have no objection to you reading them.

THE COURT: Do any of you object to that?

04:05:33PM 1 MR. CRAIG: Your Honor, I do have copies of the  
04:05:35PM 2 objections that I made. Can I give you those copies?

04:05:43PM 3 THE COURT: They are somewhere separately than  
04:05:46PM 4 the --

04:05:46PM 5 MR. CRAIG: Yeah. In compliance with the local  
04:05:48PM 6 rule, I noted my objections in the margins. Those were  
04:05:55PM 7 not included in the ones that were done by plaintiffs'  
04:06:02PM 8 counsel.

04:06:03PM 9 THE COURT: Have you got a copy of that?

04:06:07PM 10 MR. CRAIG: Yes. If you will give me one second,  
04:06:09PM 11 your Honor.

04:06:10PM 12 MR. ADAMS: Do you want to just write them in the  
04:06:12PM 13 transcript he has during a break so it is all on one  
04:06:15PM 14 thing?

04:06:15PM 15 MR. CRAIG: I don't think we will have that  
04:06:17PM 16 opportunity. I sent them to plaintiffs' counsel, so they  
04:06:21PM 17 already have copies of them.

04:06:30PM 18 THE COURT: I guess it is five after 4:00. I  
04:06:33PM 19 usually go to 4:30, but it looks like I've got a longer  
04:06:37PM 20 night than that ahead of me. But surely we are going into  
04:06:45PM 21 tomorrow.

04:06:49PM 22 Give me whatever else you want me to read, and I will  
04:06:52PM 23 get after it and try to be ready for you tomorrow at 9:30.  
04:07:02PM 24 We may have further testimony. I don't know. Anybody  
04:07:06PM 25 anticipate calling witnesses from the defense side?

04:07:12PM 1 MR. VEGA: Your Honor, yes, on behalf of Foster  
04:07:15PM 2 Wheeler we will be calling Mr. Benjamin Adams.

04:07:23PM 3 THE COURT: Well, that will be interesting.  
04:07:27PM 4 Mr. Adams probably is the only one with a memory of what  
04:07:31PM 5 went on here. Okay. I will read this stuff. I will get  
04:07:47PM 6 it from Tyler when we break.

04:07:52PM 7 MR. CRAIG: Your Honor, may I provide you with  
04:07:54PM 8 the notation copies? May I approach?

04:07:56PM 9 THE COURT: Yeah. Give them to the clerk. You  
04:08:02PM 10 are on your feet, are you about to say something  
04:08:05PM 11 important?

04:08:05PM 12 MS. JOHNSON: No. I thought you were going to  
04:08:07PM 13 get up.

04:08:07PM 14 THE COURT: Okay. I will come back. Tomorrow  
04:08:12PM 15 morning.

16 (Proceedings recessed.)  
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## C E R T I F I C A T E

I, Barry Fanning, Official Court Reporter for the  
United States District Court, Western District of  
Washington, certify that the foregoing is a true and  
correct transcript from the record of proceedings in the  
above-entitled matter.

/s/ Barry Fanning  
Barry Fanning, Court Reporter